



UNITED STATES GOVERNMENT

NATIONAL LABOR RELATIONS BOARD

OFFICE OF THE GENERAL COUNSEL

Division of Legal Counsel
Contempt, Compliance & Special Litigation Branch
1015 Half Street S.E., Fourth Floor
Washington, D.C. 20003

June 12, 2023

Your Honor,

It is with the utmost pleasure that I recommend Andrew Young for a federal clerkship in your chambers.

Mr. Young interned with our office, the NLRB's Contempt, Compliance, and Special Litigation Branch, over the summer after his first year of law school. Our Branch handles both offensive and defensive litigation for the agency, and Mr. Young's work contributed substantially to both sides.

Before delving into Mr. Young's substantive work, I feel compelled to discuss how kind and thoughtful I found Mr. Young to be. Within his first week, Mr. Young knew the names of each member of the custodial staff that keeps our office clean. He treated them with as much attention and respect as he treated the lawyers in our Branch, displaying an unprecedented level of graciousness and maturity. He made our office a kinder, warmer place to work.

Substantively, Mr. Young was given several assignments during his internship, including drafting an investigative subpoena and researching preemption issues. Of particular note was his research and written memorandum on the public rights doctrine and the power of Congress to assign public rights cases to non-jury administrative adjudication. Mr. Young conducted an extensive review and analysis of *Jarkesy v. SEC*, a Fifth Circuit opinion that invalidated the Securities and Exchange Commission's enforcement power on the grounds that it violated the Seventh Amendment right to a jury trial. Mr. Young's memo provided background on the Seventh Amendment's public rights exception, with a useful blueprint of how the jurisprudence has developed since the early 19th century. He also described the Fifth Circuit's holding in *Jarkesy*, which has been instrumental in our Branch's work to determine how the NLRB might distinguish itself from the SEC. His research was comprehensive, and his writing was clear and concise. Issues faced by the NLRB can often be very difficult to understand because they involve a diverse set of legal principles, like federal labor law, constitutional law, and civil procedure. Mr. Young's writing style is straightforward and succinct, while sufficiently communicative of the substance. This level of skill is rare to see in a law student so early in their legal academic career.

Beyond his stellar writing and research skills, I was struck by Mr. Young's commitment to his work. He is a diligent worker who takes pride in what he does. He was always willing to put in the extra effort to ensure that his work is of the highest quality. This was evident in both independent assignments and while working with others. He was a reliable, responsible, and enthusiastic member of our team.

I am confident that Mr. Young would be an asset to your judicial chambers. If you have any questions regarding the above, please feel free to contact me.

Sincerely,

/s/ Helene D. Lerner

Helene D. Lerner
Deputy Assistant General Counsel
(202) 273-3738
Helene.Lerner@nlrb.gov

Andrew Young

1600 Massachusetts Ave., Apt. 505, Cambridge, MA 02138 | ayoung@jd24.law.harvard.edu | 203-536-9712

The following is a memo I prepared as part of my 2022 summer internship with the National Labor Relations Board's Contempt, Compliance, and Special Litigation Branch. In May 2022, the Fifth Circuit issued an opinion invalidating the Securities and Exchange Commission's enforcement power, finding that it violated the petitioner's Seventh Amendment right to a jury trial. *Jarkesy v. SEC*, 34 F.4th 446 (5th Cir. 2022). This memo was written to provide background on the Seventh Amendment and the public rights exception, in anticipation of a similar challenge to the NLRB's authority.

To: Helene Lerner, NLRB Deputy General Counsel
From: Andrew Young
RE: The Seventh Amendment and the Public Rights Exception
Date: July 28, 2022

A. Early Seventh Amendment Jurisprudence

The Seventh Amendment to the United States Constitution establishes a right to a jury trial in civil suits: “In Suits at common law...the right of trial by jury shall be preserved, and no fact tried by jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.” U.S. Const. amend. VII. From the Seventh Amendment’s inception to the middle of the 19th century, Seventh Amendment jurisprudence focused most specifically on what constitutes “Suits at common law.” In *Parsons v. Bedford*, 28 U.S. 433, 434 (1830), the Supreme Court held that “Suits at common law” included all civil suits “unless in equity and admiralty.”¹ More than one hundred years later, the Supreme Court narrowed *Parsons* by developing the “Historical Test,” holding that the right to a jury trial exists only for causes of action that were provided under English common law in 1791, the year that the Seventh Amendment was ratified. *Baltimore & Caroline Line v. Redman*, 295 U.S. 654, 657 (1935).

Throughout the 20th century, the Supreme Court clarified and refined the Historical Test, determining which causes of action are sufficiently analogous to those provided under English common law such that the right to a jury trial is preserved. *See, e.g., Curtis v. Loether*, 415 U.S.

¹ The *Parsons*’ Court found suits “in equity” to be suits where *only* injunctive relief was sought. However, the distinction between suits “in equity” and suits “in law” is not always clear. Indeed, the Federal Rules of Civil Procedure were amended in 1938 to abolish the distinction between suits “in equity” and suits “in law” altogether. For purposes of Seventh Amendment jurisprudence though, suits “in equity” and suits “in law” are still parsed. *See* George P. Smith II, *Equity and Admiralty: A Turbulent Path to Manifest Destiny*, 5 NW. J. INT’L L. & BUS. 65 (1983).

189 (1974) (holding that the Seventh Amendment applies to rights preserved in statute, as long as the right is a “legal right”); *Tull v. United States*, 481 U.S. 412 (1987) (finding that a defendant is entitled to a jury trial when accused of violating a federal environmental statute); *Markman v. Westview Instruments*, 517 U.S. 370 (1996) (holding that interpretations of terms in patents do not require a jury trial); see also Margaret L. Moses, *What the Jury Must Hear: The Supreme Court’s Evolving Seventh Amendment Jurisprudence*, 68 GEO. WASH. L. REV. 183, 192-217 (2000).

B. Exceptions to the Seventh Amendment’s Right to a Jury Trial

In the 1930s, the rise of the administrative state and an overwhelming influx of civil suits with demands for jury trials prompted the Court to carve out exceptions to the Seventh Amendment’s guarantee. In *Crowell v. Benson*, 285 U.S. 22 (1932), the Court held that the administrative scheme of the United States Employees’ Compensation Commission did not violate the Seventh Amendment, despite delegating “findings of fact” to the deputy commissioner. The Court distinguished “private rights” from rights involving the government’s authority to perform executive and legislative functions, finding that a jury trial was not required for the latter. *Id.* at 50. Acknowledging concerns of judicial efficiency, the Court recognized Congress’ power to “furnish a prompt, continuous, expert and inexpensive method for dealing with a class of questions of fact.” *Id.* at 46.

Five years later, in *NLRB v. Jones & Laughlin Steel Corp.*, 301 U.S. 1 (1937), the Court recognized an exception to the Seventh Amendment for administrative proceedings. In upholding the constitutionality of the National Labor Relations Act, the Court found that statutory causes of action are “unknown to the common law” so “[t]he contention under the Seventh Amendment is without merit.” *Id.* at 48-49. This rationale was echoed in *Katchen v. Landry*, 382 U.S. 323

(1966), where the Court found no right to a jury trial in bankruptcy court, because bankruptcy law involves “a specific statutory scheme contemplating the prompt trial of a disputed claim without the intervention of a jury.” *Id.* at 339.

In *Curtis v. Loether*, 415 U.S. 189 (1974), the Court clarified its holding in *Jones & Laughlin Steel*, stating that “*Jones & Laughlin* merely stands for the proposition that the Seventh Amendment is generally inapplicable in administrative proceedings, where jury trials would be incompatible with the whole concept of administrative adjudication and would substantially interfere with the NLRB’s role in the statutory scheme.” *Id.* at 194. The Court explained that “[t]hese cases uphold congressional power to entrust enforcement of statutory rights to an administrative process or specialized court of equity free from the structures of the Seventh Amendment.” *Id.* at 195.

While focusing most on statutory causes of action that Congress did not intend to be litigated in federal court, the Supreme Court adopted the “public rights exception” to Seventh Amendment jurisprudence in *Atlas Roofing v. Occupational Safety and Health Commission*, 430 U.S. 442 (1977). In a unanimous decision, the Court held that in disputes over “public rights,” the Seventh Amendment “does not prohibit Congress from assigning the factfinding function and initial adjudication to an administrative forum with which the jury would be incompatible.” *Id.* at 450.² The Court did not, however, outrightly define a “public right,” stating only that public

² The Supreme Court has offered several reasons for the public rights exception. *See generally* Kenneth S. Klein, *The Validity of the Public Rights Doctrine in Light of the Historical Rationale of the Seventh Amendment*, 21 HASTINGS CONST. L.Q. 1013 (1994). In *Crowell v. Benson*, 285 U.S. 22 (1932), the Court explained that the separation of powers allowed Congress to delegate adjudicative authority over some disputes to the Executive Branch. When the federal government is a party, the Court has also endorsed a sovereign immunity rationale, recognizing that if the “sovereign” can only be sued with its consent, then it can condition its consent on the forum of the proceeding. *See, e.g., McElrath v. United States*, 102 U.S. 426 (1880). In *Atlas Roofing* itself, the Court also made administrability and efficiency arguments for “quasi-adjudicative”

rights cases include “cases in which the Government sues in its sovereign capacity to enforce...statutes within the power of Congress to enact,” but not “[w]holly private tort, contract, and property cases, as well as a vast range of other cases.” *Id.* at 458.³

Since *Atlas Roofing*, the Court has struggled to define public rights.⁴ This ambiguity divided the Court in *Northern Pipeline Construction v. Marathon Pipe Line*, 458 U.S. 50 (1982), where a plurality found that “public rights” exist only in suits that “at a minimum arise ‘between the government and others.’” *Id.* at 69 (quoting *Ex parte Bakelite Corp.*, 279 U.S. 438, 451 (1929)). The plurality also identified public rights as “matters that could be conclusively determined by the Executive and Legislative Branches,” rather than matters that are “inherently judicial.” *Northern Pipeline*, 458 U.S. at 68.

The dissent in *Northern Pipeline* took issue with this distinction, arguing that there is “no difference in principle between the work that Congress may assign to an Art. I court and that which the Constitution assigns to Art. III courts.” *Northern Pipeline*, 458 U.S. at 113 (White, J., dissenting). Writing for three justices, Justice White wrote, “Whether an issue can be decided by a non-Art. III court does not depend upon the judicial or nonjudicial character of the issue, but on the will of Congress and the reasons Congress offers for not using an Art. III court.” *Id.* at 108.

administrative proceedings. Writing for the Court, Justice White explained, “Congress is not required by the Seventh Amendment to choke the already crowded federal courts with new types of litigation.” *Atlas Roofing*, 430 U.S. at 455.

³ The breadth of the Court’s holding in *Atlas Roofing* cannot be overstated. Indeed, it “proclaimed that an entire area of the law was beyond the scope of the Seventh Amendment: new statutory actions created by Congress and assigned for adjudication to an administrative agency, as long as the actions involved public rights.” Margaret L. Moses, *What the Jury Must Hear: The Supreme Court’s Evolving Seventh Amendment Jurisprudence*, 68 GEO. WASH. L. REV. 183, 214 (2000).

⁴ See *Stern v. Marshall*, 564 U.S. 462, 488 (2011) (noting that the public rights exception is “not entirely consistent” doctrine); see also Martin H. Redish, *Seventh Amendment Right to Jury Trial: A Study in the Irrationality of Rational Decision Making*, 70 NW. U. L. REV. 486 (1976).

He proposed a balancing test: “The inquiry should, rather, focus equally on those Art. III values and ask whether and to what extent the legislative scheme accommodates them, or conversely, substantially undermines them. The burden on Art. III values should then be measured against the values Congress hopes to serve through the use of Art. I courts.” *Id.* at 115.

Seven years later, in *Granfinanciera v. Nordberg*, 492 U.S. 33 (1989), the Court provided more clarity on the meaning of “public rights.” Rejecting the plurality opinion in *Northern Pipeline*, a majority of the Court held that the Government does not *need* to be a party to a case for it to concern a public right:

The crucial question, in cases not involving the Federal Government, is whether “Congress, acting for a valid legislative purpose pursuant to its constitutional powers under Article I, [had] create[d] a seemingly ‘private’ right that is so closely integrated into a public regulatory scheme as to be a matter appropriate for agency resolution with limited involvement by the Article III judiciary.” *Thomas v. Union Carbide Agr. Products Co.*, 473 U.S. 568, 593-94 (1985). If a statutory right is not closely intertwined with a federal regulatory program Congress has power to enact, and if that right neither belongs to nor exists against the Federal Government, then it must be adjudicated by an Article III court. If the right is legal in nature, then it carries with it the Seventh Amendment’s guarantee of a jury trial.

Id. at 54-55 (footnote omitted).

Concurring only in judgement, Justice Scalia disapproved of the Court’s departure from *Northern Pipeline*’s construction of the public rights exception. He argued that consistent with the Court’s rulings in *Murray’s Lessee*, *Ex parte Bakelite*, *Crowell*, and *Atlas Roofing*, the government must be a party for a case to concern public rights. He wrote, “It is clear that what we meant by public rights were not rights important to the public, or rights created by the public, but rights *of the public* – that is, rights pertaining to claims brought by or against the United States.” *Granfinanciera*, 492 U.S. at 68 (1989) (Scalia, J., concurring).⁵ Nonetheless, in *Stern v.*

⁵ Justice Scalia leaned heavily on the “sovereign immunity” rationale while arguing that public rights must involve claims brought by or against the United States. He wrote, “For central to our

Marshall, 564 U.S. 462, 488 (2011), the Court upheld *Granfinanciera*'s definition of a public right, reaffirming that a public right includes statutory rights that arise from a federal regulatory scheme.

While not reshaping the doctrine, the most recent case with a detailed discussion of the public rights exception is *Oil States Energy Services v. Greene's Energy Group*, 138 S.Ct. 1365 (2018). There, the appellant contended that *inter partes* review of patents by administrative law judges, without a jury trial, violated the Seventh Amendment. Writing for seven justices, Justice Thomas rejected this claim, finding that Congress has "significant latitude to assign adjudication of public rights to entities other than Article III courts." *Id.* at 1373. Notably, the Court did not endorse *Granfinanciera*'s broad interpretation of "public rights," stating only that, at a minimum, the public rights exception to the Seventh Amendment includes "matters arising between the government and others, which from their nature do not require judicial determination and yet are susceptible of it." *Id.* at 1373.

In a brief concurrence, Justice Breyer, joined by Justices Ginsburg and Sotomayor, wrote that while public rights are not required to be adjudicated in Article III courts, "the Court's opinion should not be read to say that matters involving private rights may never be adjudicated other than by Article III Courts, say, sometimes by agencies." *Oil States*, 138 S.Ct. at 1379 (Breyer, J., concurring). Quoting his dissent in *Stern*, Justice Breyer wrote, "[t]he presence of 'private rights' does not automatically determine the outcome of the question but requires a more 'searching' examination of the relevant factors." *Id.*

reasoning was the device of waiver of sovereign immunity... Waiver of sovereign immunity can only be implicated, of course, in suits where the Government is a party." *Granfinanciera*, 492 U.S. at 68 (Scalia, J., concurring).

While *Oil States* is the most recent Supreme Court case discussing the public rights exception in detail, the Supreme Court acknowledged the doctrine again in 2021. In *United States v. Arthrex*, 141 S.Ct. 1970 (2021), Justice Roberts, writing for the majority, found that Administrative Patent Judges have the power to reconsider an issued patent. In dicta, he referred to the “adjudication of public rights” as a power “that Congress may appropriately assign to executive officers rather than the Judiciary.” *Id.* at 1980.

C. Contemporary Circuit Court Rulings on the Seventh Amendment

In 2022, the Fifth Circuit heard a challenge to the adjudicative scheme of the Securities and Exchange Commission (SEC), on the grounds that it violated the Seventh Amendment. In its opinion, the court parted with precedent and presented a new analysis for determining whether a cause of action is covered by the Seventh Amendment’s right to a jury trial. *Jarkesy v. SEC*, 34 F.4th 446, 453 (5th Cir. 2022).⁶ The court wrote:

First, a court must determine whether an action’s claims arise “at common law” under the Seventh Amendment.⁷ Second, if the action involves common-law claims, a court must determine whether the Supreme Court’s public-rights cases nonetheless permit Congress to assign it to agency adjudication without a jury trial. Here, the relevant considerations include: (1) whether “Congress ‘create[ed] a new cause of action, and remedies therefor, unknown to the common law,’ because traditional rights and remedies were inadequate to cope with a manifest public problem”; and (2) whether jury trials would “go far to

⁶ On July 1, 2022, the SEC filed a petition for en banc review. As of July 27, 2022, a decision is still pending.

⁷ *Jarkesy*’s definition of suits “at common law” is inconsistent with precedent on the public rights exception to the Seventh Amendment. Relying heavily on *Tull v. United States*, 481 U.S. 412, 418-24 (1987), the court in *Jarkesy* said that suits “at common law” include “suits brought under a statute seeking civil penalties.” *Jarkesy*, 34 F.4th at 452. Case law does not support such an expansive definition. See, e.g., *NLRB v. Jones & Laughlin Steel Corp.*, 301 U.S. 1 (1937). The majority’s reliance in *Tull* is further inapt because *Tull* does not involve administrative proceedings or public rights. The dissent in *Jarkesy* wrote, “Finally, it should be emphasized that *Tull v. United States* does not control the outcome here. That case concerned the Government’s suit in district court seeking civil penalties...*Tull* did not involve an administrative proceeding...[T]he Court did not engage in the ‘quite distinct inquiry’ into whether the claim was also a ‘public right’ that Congress may assign to a non-Article III forum where juries are unavailable.” *Jarkesy*, 34 F.4th at 473 (Davis, J., dissenting).

dismantle the statutory scheme” or “impede swift resolution” of the claims created by statute.

Id.

In applying this new analysis, the court found that claims by the SEC arise “at common law,” because they “reflect common-law fraud actions.” *Jarkesy*, 34 F.4th at 455. Next, the court found that the action brought by the SEC is “not the sort that may be properly assigned to agency adjudication under the public-rights doctrine.” *Id.* The court reasoned that “securities fraud actions are not new actions unknown to the common law.” Further, it found that jury trials in securities fraud suits would not “dismantle the statutory scheme addressing securities fraud or impede swift resolution of the SEC’s fraud prosecutions. And such suits are not uniquely suited for agency adjudication.” *Id.* Accordingly, the court found that the SEC’s enforcement scheme violated the petitioner’s Seventh Amendment right to a jury trial. *Id.*

The dissenting opinion approached this case with more deference to precedent, finding that the majority failed to employ an accurate understanding of the public rights exception. It argued that consistent with *Crowell*, *Atlas Roofing*, and, implicitly, *Oil States*, public rights are matters “which arise between the Government and persons subject to its authority in connection with the performance of the constitutional functions of the executive or legislative departments.” *Jarkesy*, 34 F.4th at 467 (Davis, J., dissenting). The dissent found that SEC enforcement action in this case fits squarely within this definition of public rights, primarily because the Government is suing in its sovereign capacity to enforce a public right created by statutes within the power of Congress to enact. *Id.*

Like the dissent in *Jarkesy*, other circuits “routinely hold that an enforcement action by the Government for violations of a federal statute or regulation is a ‘public right’ that Congress may assign to an agency for adjudication without offending the Seventh Amendment.” *Jarkesy*,

34 F.4th at 468. The Eleventh Circuit held that an SEC enforcement proceeding does not violate the Seventh Amendment because “it is well-established that the Seventh Amendment does not require a jury trial in administrative proceedings designed to adjudicate statutory ‘public rights.’” *Imperato v. SEC*, 693 Fed.Appx. 870, 876 (11th Cir. 2017). In the Second Circuit, the court held that Financial Institutions Reform, Recovery and Enforcement Act of 1989 enforcement proceedings do not violate the Seventh Amendment because “when the government sues in its sovereign capacity to enforce ‘public rights,’ Congress may assign the factfinding and initial adjudication to an administrative forum.” *Cavallari v. Office of Comptroller of Currency*, 57 F.3d 137, 145 (2nd Cir. 1995). In the Federal Circuit, the court held that adjudicative proceedings by the “quasi-judicial arm of the Department of Energy” do not violate the Seventh Amendment because “it is a ‘public right’ that is being enforced.” *Crude Co. v. FERC*, 135 F.3d 1445, 1454-55 (Fed Cir. 1998). Lastly, in the Fourth Circuit, the court held that EPA enforcement proceedings are not a violation of the Seventh Amendment because “the Seventh Amendment does not apply to disputes over statutory public rights, described as ‘those which arise between the Government and persons subject to its authority in connection with the performance of the constitutional functions of the executive or legislative departments.’” *Sasser v. EPA*, 990 F.2d 127, 130 (4th Cir. 1993).

While *Jarkesy* represents a significant departure from precedent, the Supreme Court may see it as an opportunity to reexamine the public rights exception or the broader scope of Seventh Amendment jurisprudence. If the case reaches the Court, its impact on the NLRB may depend upon the scope of the decision. The most disruptive outcome would be for the Court to overturn *Atlas Roofing* altogether, holding that there is no public rights exception to the Seventh

Amendment.⁸ This could dismantle the adjudicative power of every administrative agency, including the NLRB. The Court could also take a less extreme approach by limiting the scope of the public rights exception, consistent with Justice Scalia's concurring opinion in *Granfinanciera*. This would scale back the breadth of the administrative state, without fully dismantling it. Regardless, the NLRB must keep a watchful eye on *Jarkesy* as it proceeds through the courts, as it has the potential to reshape the administrative state in its entirety.

⁸ See, e.g., Kenneth S. Klein, *The Validity of the Public Rights Doctrine in Light of the Historical Rationale of the Seventh Amendment*, 21 HASTINGS CONST. L.Q. 1013, 1038 (1994) (predicting a conservative Supreme Court will reconsider the public rights exception in its entirety).

Applicant Details

First Name **Asher**
 Middle Initial **F**
 Last Name **Young**
 Citizenship Status **U. S. Citizen**
 Email Address asher.young@temple.edu

Address

Address
Street 2121 Market Street
City Philadelphia
State/Territory Pennsylvania
Zip 19103
Country United States

Contact Phone Number **(413)-687-5751**

Applicant Education

BA/BS From **Wesleyan University**
 Date of BA/BS **May 2017**
 JD/LLB From **Temple University--James E. Beasley School of Law**
http://www.nalplawschoolsonline.org/ndlsdir_search_results.asp?lscd=23905&yr=2011
 Date of JD/LLB **May 23, 2024**
 Class Rank **5%**
 Law Review/Journal **Yes**
 Journal(s) **Temple Law Review**
 Moot Court Experience **No**

Bar Admission

Prior Judicial Experience

Judicial
Internships/ **No**
Externships
Post-graduate
Judicial Law **No**
Clerk

Specialized Work Experience

Recommenders

Ramji-Nogales, Jaya
Jaya.Ramji-Nogales@temple.edu
215-204-6430

Craig, Green
craig.green@temple.edu
215-880-0374

Knauer, Nancy
nancy.knauer@temple.edu
215-204-1688

**This applicant has certified that all data entered in this profile and
any application documents are true and correct.**

Asher Young

2121 Market St., Apt. 314, Philadelphia, PA 19103 • (413) 687-5751 • asher.young@temple.edu

The Honorable Juan Sanchez
United States District Court for the Eastern District of Pennsylvania
14613 U.S. Courthouse
601 Market Street
Philadelphia, PA 19106

June 11, 2023

Dear Chief Judge Sanchez,

I write to express my strong interest in a clerkship with your chambers. I graduate from Temple University Beasley School of Law in May 2024, and would be available to clerk for the 2024-2025 term. With a strong interest in public service and government work, I would be honored to serve the Philadelphia area and the Eastern District of Pennsylvania under your guidance.

Having conducted legal research and analysis in both the public and private sectors, I am confident I would excel as your law clerk. At Temple, I received the top grade and “Best Paper” award in Legal Research and Writing II, and will intern with the Third Circuit Court of Appeals next year as part of Temple’s Federal Judicial Clerkship Clinical Honors Program. I am particularly interested in applying my legal skills to a wide range of contexts, as demonstrated by my academic research as a Law & Public Policy Scholar and my work as an Articles Editor for Temple Law Review.

I have attached for your reference my resume, an unofficial transcript, and a writing sample. Letters of recommendation will be sent separately. I would welcome the opportunity to meet in person or remotely and further discuss the position. Thank you for your time and consideration.

Respectfully,



Asher Young

Asher Young

2121 Market St., Apt. 314, Philadelphia, PA 19103 • (413) 687-5751 • asher.young@temple.edu

EDUCATION

TEMPLE UNIVERSITY BEASLEY SCHOOL OF LAW Philadelphia, PA
J.D. Candidate | GPA: 3.82 (Top 5%) May 2024

Honors: *Temple Law Review*, Vol. 96 Articles Editor
2023-2024 Federal Judicial Clerkship Honors Program
2022-2023 Arthur H. Gold Scholarship for Outstanding Academic Performance
2022 Law & Public Policy Scholar
Distinguished Performance in Civil Procedure I and Constitutional Law
Best Paper in Legal Research and Writing II

Presentations: The Intersection of Law & Policy at Temple Law: 2023 Annual Update

Activities: American Constitution Society; Student Public Interest Network

WESLEYAN UNIVERSITY Middletown, CT
B.A. in Government and Spanish May 2017

Honors: NESCAC Spring All-Academic Team, 2015-2017; Dean's List

Activities: Men's Varsity Baseball Team, Captain; *Wesleyan Argus*, Staff Writer

WORK EXPERIENCE

FAEGRE DRINKER BIDDLE & REATH LLP Philadelphia, PA
Summer Associate May 2023 – July 2023

Research legal issues in commercial litigation cases and pro bono matters. Observe and prepare for hearings, conferences, and depositions.

TEMPLE UNIVERSITY BEASLEY SCHOOL OF LAW Philadelphia, PA
Research Assistant for Professor Craig Green August 2022 – December 2022
Research and edit articles on territory and statehood, and affirmative action in legal education.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES Washington, D.C.
Legal Intern May 2022 – August 2022

Track and analyze potential impacts of legislative proposals on federal agency operations and regulatory programs. Research administrative law issues to improve the fairness and efficiency of federal agency procedures for managing grants and benefits.

BENNETT MIDLAND LLC New York, NY
Senior Associate and Associate (promoted in June 2019) June 2017 – June 2021

Support nonprofits, government agencies, and philanthropies as a management consultant, with a focus on policy analysis, program design, strategic planning, and performance measurement. Coordinate the implementation of Raise the Age legislation and statewide bail reforms in New York City. Deliver technical assistance to elected municipal officials advancing racial and economic equity projects across the American South.

SKILLS AND INTERESTS

Proficient in Spanish. Interested in baseball analytics, urban design, and public history.

Asher Young

Student Academic Transcript

Academic Transcript

Transcript Level

Law

Transcript Type

Advising Transcript

Student Information

Institution Credit

Transcript Totals

Course(s) in Progress

This is not an official transcript. Courses which are in progress may also be included on this transcript.

Student Information

Name

Asher F. Young

Student Type

Continuing Degree
Seeking

Curriculum Information

Current Program : **Juris Doctor**

Program

Law--Full Time

College

Law, Beasley School

Campus

Main

Major and
Department

Law--Full Time, Law:
Beasley School of
Law

Institution Credit

Term : 2021 Fall

College

Law, Beasley School

Major

Law--Full Time

Student Type

First Time
Professional

Academic Standing

Not Calculated

Additional Standing

Dean's List

Term Comments

Semester Notations:

DCP (Civil Procedure
I)

Subject	Course	Campus	Level	Title	Grade	Credit Hours	Quality Points	R	CEU Contact Hours
JUDO	0402	Main	LW	Civil Procedure I Ramji-Nogales, J	A	4.000	16.00		
JUDO	0406	Main	LW	Contracts Lipson, J	A+	4.000	16.00		
JUDO	0414	Main	LW	Legal Research & Writing Kaplan, R	B+	3.000	9.99		
JUDO	0420	Main	LW	Torts Culhane, J	A	4.000	16.00		
JUDO	0437	Main	LW	Intro to Transactional Skills Monroe, A	S	1.000	0.00		

Term Totals	Attempt Hours	Passed Hours	CEU Hours	GPA Hours	Quality Points	GPA
Current Term	16.000	16.000	16.000	15.000	57.99	3.87
Cumulative	16.000	16.000	16.000	15.000	57.99	3.87

Term : 2022 Spring

College

Law, Beasley School

Major

Law--Full Time

Student Type

Continuing Degree Seeking

Additional Standing

Dean's List

Term Comments

Semester Notations:

Tie-BP (Legal Research & Writing II)

DCP (Constitutional Law)

Subject	Course	Campus	Level	Title	Grade	Credit Hours	Quality Points	R	CEU Contact Hours
JUDO	0404	Main	LW	Constitutional Law Green, R	A	4.000	16.00		
JUDO	0410	Main	LW	Criminal Law I Deguzman, M	A	3.000	12.00		
JUDO	0414	Main	LW	Legal Research & Writing Kaplan, R	A	2.000	8.00		
JUDO	0418	Main	LW	Property Baron, J	B+	4.000	13.32		
JUDO	0600	Main	LW	Taxation Abreu, A	A	3.000	12.00		

Term Totals	Attempt Hours	Passed Hours	CEU Hours	GPA Hours	Quality Points	GPA
Current Term	16.000	16.000	16.000	16.000	61.32	3.83
Cumulative	32.000	32.000	32.000	31.000	119.31	3.85

Term : 2022 Summer I

College

Law, Beasley School

Major

Law

Student Type

Continuing Degree Seeking

Subject	Course	Campus	Level	Title	Grade	Credit Hours	Quality Points	R	CEU Contact Hours
JUDO	W510	Main	LW	Institutional Decision Making	B+	3.000	9.99		
JUDO	W910	Main	LW	Law and Public Policy Knauer, N	A	3.000	12.00		

Term Totals	Attempt Hours	Passed Hours	CEU Hours	GPA Hours	Quality Points	GPA
Current Term	6.000	6.000	6.000	6.000	21.99	3.67
Cumulative	38.000	38.000	38.000	37.000	141.30	3.82

Term : 2022 Fall

College

Law, Beasley School

Major

Law--Full Time

Student Type

Continuing Degree Seeking

Additional Standing

Dean's List

Subject	Course	Campus	Level	Title	Grade	Credit Hours	Quality Points	R	CEU Contact Hours
JUDO	0540	Main	LW	Evidence Ouziel, L	B+	3.000	9.99		
JUDO	0902	Main	LW	Guided Research Serial - Legal History Workshop Green, R	A+	3.000	12.00		
JUDO	0905	Main	LW	Temple Law Review Reinstein, R	CR	3.000	0.00		
JUDO	1025	Main	LW	Law and Public Policy II	A	3.000	12.00		

Term Totals	Attempt Hours	Passed Hours	CEU Hours	GPA Hours	Quality Points	GPA
Current Term	12.000	12.000	12.000	9.000	33.99	3.78
Cumulative	50.000	50.000	50.000	46.000	175.29	3.81

Term : 2023 Spring

College

Law, Beasley School

Major

Law--Full Time

Student Type

Continuing Degree Seeking

Academic Standing

Not Calculated

Last Academic Standing

Not Calculated

Subject	Course	Campus	Level	Title	Grade	Credit Hours	Quality Points	R	CEU Contact Hours
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Subject	Course	Campus	Level	Title	Grade	Credit Hours	Quality Points	R	CEU Contact Hours
JUDO	0400	Main	LW	Administrative Law Green, R	A	3.000	12.00		
JUDO	0416	Main	LW	Professional Responsibility Bachar, G	A-	3.000	11.01		
JUDO	0532	Main	LW	Criminal Procedure I Ouziel, L	A	3.000	12.00		
JUDO	0558	Main	LW	Intro to Trial Advocacy Scott, K	S+	3.000	0.00		

Term Totals	Attempt Hours	Passed Hours	CEU Hours	GPA Hours	Quality Points	GPA
Current Term	12.000	12.000	12.000	9.000	35.01	3.89
Cumulative	62.000	62.000	62.000	55.000	210.30	3.82

Transcript Totals

Transcript Totals - (Law)	Attempt Hours	Passed Hours	CEU Hours	GPA Hours	Quality Points	GPA
Total Institution	62.000	62.000	62.000	55.000	210.30	3.82
Total Transfer	0.000	0.000	0.000	0.000	0.00	0.00
Overall	62.000	62.000	62.000	55.00	210.30	3.82

Course(s) in Progress

Term : 2023 Fall

College

Law, Beasley School

Major

Law--Full Time

Student Type

Continuing Degree
Seeking

Subject	Course	Campus	Level	Title	Credit Hours
JUDO	0542	Main	LW	Federal Courts and Jurisdiction	3.000
JUDO	0726	Main	LW	Federal Judicial Clerkship	3.000
JUDO	1039	Main	LW	Race and the Law	3.000

June 12, 2023

The Honorable Juan Sanchez
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

Dear Judge Sanchez:

I write in enthusiastic support of Asher Young's application for a clerkship in your chambers. I am Associate Dean for Research and the I. Herman Stern Research Professor at Temple University's Beasley School of Law, where Asher was a student in my Civil Procedure I course in his first semester of law school. His performance in that course was outstanding, and he has continued to meet with me regularly to discuss his course selection and career plans. I have been continually impressed with Asher's superb analytical skills, his exceptional writing abilities, his highly developed organizational skills and self-starter nature, his close attention to detail, and his pleasant and professional demeanor. For all of these reasons, I invited Asher to act as a Teaching Assistant for my Civil Procedure I course this fall, selecting his application from a competitive process with many strong candidates. I can think of few more persuasive arguments that you should hire Asher to work in your chambers than to say that I have hired him myself.

From the first week of our Civil Procedure course, Asher served as a class leader in contextualizing and articulating challenging concepts during class discussion. He consistently raised insightful and probing questions that weaved together different sections of the course, providing clarity for his peers on how to approach complex legal questions with diligence and care. His writing in the course – consisting of a draft complaint, a practice midterm, and the final exam – exemplified these same qualities, demonstrating a thorough understanding of the material and exceptional analytic skill. As you know Civil Procedure I is one of the most challenging first year courses, and my goal as a professor is to consistently push students outside of their comfort zone. My final exam consists of a four-hour, complex hypothetical fact pattern that requires students to spot issues, identify the relevant legal rule, apply it to the salient facts, argue both sides, and organize their answer effectively, all under serious time pressure. Asher received one of the top three grades in the class of seventy students. I have since used his exam as a model answer for my Civil Procedure students because of its cogency and quality of analysis. I also awarded Asher Distinguished Class Performance to recognize his exceptional contributions to classroom discussions.

Since his first semester, I have continued to work with Asher as an academic advisor. I have been impressed by his organizational skills and attention to detail. As an advisor, I have met regularly with Asher to help tailor his courses to support his commitment to public service. Throughout these discussions, Asher has taken a measured and considered approach to academic planning, particularly in determining how to best pursue his interests in administrative law and public policy. Even alongside his law review and student organization responsibilities, Asher routinely provides detailed agendas and questions in advance of our meetings. Our conversations are thorough and nuanced, and Asher has shown himself as a self-starter and critical thinker throughout our work together.

Asher's work ethic and positive demeanor have made him a valuable part of the Temple Law community, and I am thrilled to receive his support next semester as a Civil Procedure Teaching Assistant. Asher's professionalism and commitment to serving others makes him well-prepared to help first-year students navigate difficult topics during their first semester of law school, and I very much look forward to working with him and seeing his own mentorship skills flourish next fall.

For all of these reasons, I believe that Asher would make an excellent law clerk: he has demonstrated outstanding analytical and writing abilities, strong attention to detail, and a robust work ethic. Please feel free to contact me at jayarn@temple.edu with any questions about Asher.

Very Truly Yours,

Jaya Ramji-Nogales
Associate Dean for Research
I. Herman Stern Research Professor

Jaya Ramji-Nogales - Jaya.Ramji-Nogales@temple.edu - 215-204-6430

June 12, 2023

The Honorable Juan Sanchez
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

Dear Judge Sanchez:

Asher Young is one of the most exceptional and successful members in his class, and he is certainly one of the most capable students I have known in several years. Asher was a double-major student-athlete at Wesleyan University, and he worked for several years at Bennett Midland, a strategic consultant that works exclusively with government agencies and non-profit entities. Asher was attracted to Temple Law School by one of our most prestigious merit scholarships, and his performance has fully justified those expectations: earning a 3.82 GPA despite the law school's 3.10 curve, chosen as an Articles Editor by his Law Review peers, and selected by faculty for the highly competitive Clerkship Honors Program. (In Asher's case, the latter will entail a year-long internship for Judge Marjorie Rendell of the Third Circuit.) I recommend Asher very highly for a post-graduation clerkship, and I hope you will give his application very close attention.

I know Asher from three contexts. First, he was a student in my sixty-five-person constitutional law class, which began on zoom before shifting to the classroom. He sat in the third row, slightly right of center, and was one of the most thoughtful participants in the class. Every week or two, he would stay after class for further discussion of some issue or question. These encounters quickly indicated Asher's extraordinary talent, maturity, and professionalism, all of which would be strongly confirmed by our further interactions in 2022-2023. It was no surprise that Asher's anonymously-graded exam was one of the top three in the large constitutional law course. Many aspects of his exam answer were excellent, but perhaps most extraordinary was his distinctive ability to perceive connections between technical doctrines and public values without any kind of distortion in his legal judgment.

Second, based on Asher's performance in constitutional law, I invited him to participate in an elite hand-picked Legal History Workshop. For several years, I have organized such "guided research assistant" seminars so that the law school's best students can develop stronger skills as editors and writers, ideally with the goal of preparing them for a judicial clerkship. I asked Asher and four other top-performing students to work with me in studying the history of affirmative action. Students were required to write papers on specifically assigned topics. The semester included four research-oriented meetings, with group discussion about each student's strategies, progress, and challenges. There were also four writing-oriented meetings, when students themselves led interactive discussions about one another's completed papers with close attention to composition, substance, and style.

I think that very few law schools anywhere in the country require high-performing students to share papers and comments with each other, yet I believe this process of writing, editing, and exchanging papers can yield extraordinary growth. I provided written comments on each paper, but the main goal was for students like Asher to become better editors of one another, so that they can more precisely edit their own writing. The seminar's grades were based not only on written products, but equally on the ability to generate productive suggestions and criticism for others. Asher researched topics and materials that were completely new and unfamiliar, including affirmative action in the military, Yale law's pathbreaking admissions policy during the 1960s, and social science about diversity in the judiciary. Asher had to plan ahead and be self-motivated, seeking help where necessary so that the work could be on point and efficient. Most of all, Asher had to deliver high-quality results on a very tight schedule, for a uniquely small audience of myself and strong student peers who were attentive, constructive, critical, and respectful.

Asher thrived and excelled in this unsheltered, high-pressure environment, maintaining a consistent focus on achieving even greater self-improvement. Likewise, I was able to see Asher perform across an exceedingly wide range of circumstances, including peer-interaction about substantively sensitive topics and productive responses to direct criticism. The breadth and depth of Asher's work during that semester represent the primary basis for my confidence and enthusiasm about his clerkship application. Asher earned a grade of A+ even when his work was directly compared to some of the law school's most talented students.

Third, Asher was a student in my fifty-eight-student administrative law, which was packed with talented students, including some of the most accomplished students from 2023's graduating class. Without making this letter any longer than necessary, Asher's performance was exactly as I would have expected from our prior experience, and it was especially similar to his performance in constitutional law. Asher was in no sense overactive with questions and discussions, yet he was very consistently excellent, navigating the peculiar and dynamic universe of administrative law with relentless curiosity, unwavering humility, and good cheer. Once again, Asher's anonymously-graded exam was among the top handful in an exceedingly talented class of students.

In eighteen years of teaching, thirty-seven of my research assistants have been fortunate to receive federal district clerkships, and nine have clerked in federal courts of appeals. Based on my experience, I believe that Asher's talent, diligence, and personality would position him near the very top of that accomplished group. I think Asher is an outstanding student, very easy to work with, who would be a superb asset in any judicial chambers. Long ago, I was a law clerk for Judge Louis Pollak and Judge Merrick Garland, and those experiences showed me the kind of skills and disposition that law clerks must have to succeed. I believe that Asher is a substantively excellent, personally delightful, zero-risk candidate for any high-pressure, high-quality legal workplace, especially including a judicial chambers. I hope you will give his application careful consideration, and if I can be helpful in any way, whether by email (green@temple.edu), cell phone (215-880-0374), or otherwise, I would be very happy to do that.

Green Craig - craig.green@temple.edu - 215-880-0374

Sincerely,

Craig Green

Professor of Law
Temple University

Green Craig - craig.green@temple.edu - 215-880-0374

June 12, 2023

The Honorable Juan Sanchez
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

Dear Judge Sanchez:

I write this letter in support of the clerkship application of Asher Young. I recommend Mr. Young enthusiastically and without reservation. Mr. Young is an extremely talented law student who engages the law with enthusiasm, professionalism, and a keen attention to detail. He is an excellent and persuasive writer and advocate with first-rate research and analytic skills. Mr. Young is also a leader in the Temple Law community and has been very involved with both the American Constitution Society and out student public interest organization.

I have been working with Mr. Young since his first year of law school when he applied for our highly prestigious Law & Public Policy (L&PP) Program. That year, we had three times as many applications as we had spots. As a L&PP Scholar, Mr. Young secured an internship with the Administrative Conference of the United States and wrote an excellent policy paper on federal regulatory reform. His paper was so well written and extensively researched that I recommended that he submit his paper to the annual meeting of the Law & Society Association, which is an interdisciplinary and international organization. I was not at all surprised when Mr. Young's paper was selected for the conference, and I am proud to report that he will have the opportunity to present his paper at the annual meeting in San Juan this summer on a panel that includes law professors and policy makers from around the world.

Since entering law school, Mr. Young has secured a number of highly prestigious internships where he has excelled, and next year he will be participating in our Federal Judicial Clerkship Clinical. Prior to law school, Mr. Young worked for a consulting firm in New York City that supported nonprofit organizations and government entities. Through his work at the consulting firm, Mr. Young gained problem solving experience and was involved with many innovative initiatives, including providing technical assistance to elected municipal officials who were developing equity and inclusion programs.

In short, Mr. Young is an exceptional law student. Please do not hesitate to contact me if there are any questions concerning his qualifications or abilities.

Sincerely,

Nancy J. Knauer
SHELLER PROFESSOR OF PUBLIC INTEREST LAW
DIRECTOR, LAW & PUBLIC POLICY PROGRAM

Nancy Knauer - nancy.knauer@temple.edu - 215-204-1688

Asher Young – Writing Sample

2121 Market St., Apt. 314, Philadelphia, PA 19103 • asher.young@temple.edu • (413)-687-5751

This writing sample is an excerpt of a court brief that I submitted for Legal Research & Writing II, where I was asked to represent a solo practitioner debt collection attorney facing a lawsuit under the federal Fair Debt Collection Practices Act (FDCPA). The table of authorities and statement of the case have been cut for length.

INTRODUCTION

Ms. Pearlman is entitled to summary judgment in this civil action under the federal Fair Debt Collection Practices Act (FDCPA). Ms. Freamon filed this action against Ms. Pearlman, seeking damages for Ms. Pearlman’s alleged violations of the FDCPA. The FDCPA specifically establishes a “bona fide error defense” where a debt collector may not be held liable for violating the Act if it shows its violation was not intentional, resulted from a bona fide error, and that it maintained procedures reasonably adapted to avoid any such error. This provision protects debtors by incentivizing debt collectors to employ due diligence practices to prevent them from violating the FDCPA. The provision also shields debt collectors from civil liability in cases where they attempted to comply with the statute but violated the Act unintentionally.

Ms. Freamon has not shown there is a genuine dispute of any material fact in this proceeding. Ms. Pearlman is familiar with the FDCPA and did not intend to violate the Act. Further, Ms. Pearlman’s alleged violation is a bona fide error because it resulted from a clerical error in the Philadelphia Court of Common Pleas’ online docket system. Ms. Pearlman also maintains procedures reasonably adapted to avoid making such errors, including several practices designed to avoid filing suits on uncollectible debts.

For the reasons that follow, Ms. Pearlman respectfully submits that she is entitled to summary judgment in this civil action as a matter of law.

Asher Young – Writing Sample

2121 Market St., Apt. 314, Philadelphia, PA 19103 • asher.young@temple.edu • (413)-687-5751

QUESTION PRESENTED

Is Defendant entitled to summary judgment under 15 U.S.C. § 1692(k)(c) where her alleged violation was the result of a spelling error by the Philadelphia Court of Common Pleas, she did not intend to violate the FDCPA, and she maintained procedural safeguards reasonably adapted to avoid clerical errors?

(The procedural history and statement of facts have been cut for length.)

ARGUMENT

In 1977, Congress enacted the Fair Debt Collection Practices Act (“FDCPA”) to eliminate abusive debt collection practices, protect consumers, and to ensure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged. 15 U.S.C. § 1692. Specifically, 15 U.S.C. § 1692(k)(c) provides an affirmative defense for debt collectors who did not intend to violate the FDCPA, and whose alleged violations resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error. 15 U.S.C. § 1692(k)(c). The “bona fide error” defense is an important “safety hatch” of the FDCPA because the Act authorizes damages in excess of the actual cost incurred by the victim of a violation, providing an incentive for debt collectors to take necessary precautions to avoid such violations. *Ross v. RJM Acquisitions Funding LLC*, 480 F.3d 493, 495 (7th Cir. 2007).

To determine whether Ms. Pearlman, the defendant in this case, is entitled to summary judgment, this court must assess whether she is protected by the “bona fide error” defense. If this court finds Ms. Pearlman has shown by a preponderance of the evidence that (1) her alleged FDCPA violation was unintentional; (2) the alleged violation resulted from a bona fide error; and

Asher Young – Writing Sample

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(3) she maintains procedures reasonably adapted to avoid such errors, it must grant summary judgment to Ms. Pearlman.

To win summary judgment, Ms. Pearlman must show “that there is no genuine dispute as to any material fact and [she] is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a).

Summary judgment is proper where “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 322, 106 S. Ct. 2548, 2552 (1986). A fact is “material” under Rule 56 if its existence or nonexistence might impact the outcome of the suit under the applicable substantive law. *Santini v. Fuentes*, 795 F.3d 410, 416 (3d Cir. 2015) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986)).

As the moving party, Ms. Pearlman’s burden in this case is to show that there is an “absence of evidence to support the nonmoving party’s case.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 325, 106 S. Ct. 2548, 2554 (1986). Meanwhile, the nonmoving party, Ms. Freamon, must designate “specific facts showing that there is a genuine issue for trial.” *Id.* at 324.

Ms. Freamon has not introduced any evidence that shows any genuine issue of material fact as to whether Ms. Pearlman’s alleged FDCPA violation was unintentional, whether it was due to a bona fide error, or whether she maintains procedures reasonably adapted to protect against such errors. Whether a debt collector maintains “reasonably adapted” procedures is an objective inquiry which focuses on the orderliness and regularity of the debt collector’s error-prevention steps. *Johnson v. Riddle*, 443 F.3d 723, 729 (10th Cir. 2006); *Abdollahzadeh v. Mandarin Law Grp., LLP*, 922 F.3d 810, 817 (7th Cir. 2019) (quoting *Jerman v. Carlisle, McNellie, Rini, Kramer & Ulrich, L.P.A.*, 559 U.S. 573, 587, 130 S. Ct. 1605, 1614-15 (2010)). There is no evidence in the record

Asher Young – Writing Sample

2121 Market St., Apt. 314, Philadelphia, PA 19103 • asher.young@temple.edu • (413)-687-5751

that shows any genuine issue of material fact as to whether Ms. Pearlman regularly conducts computerized searches before filing debt collection suits, whether she maintains an agreement with Midland that all files it transmits for collection are legitimate and collectible debts, or whether she regularly attends the Pennsylvania Bar Institute's FDCPA training. Pearlman Dep. at 4-5. Thus, Ms. Pearlman is entitled to summary judgment under 15 U.S.C. § 1692(k)(c), absolving her of liability for any alleged FDCPA violations in the present case.

1. Ms. Pearlman is entitled to summary judgment under 15 U.S.C. § 1692(k)(c) because her alleged FDCPA violation was not intentional and resulted from a bona fide error.

A debt collector may not be held liable for violating the FDCPA if their violation was not intentional and resulted from a bona fide error, notwithstanding the maintenance of procedures reasonably adapted to avoid any such error. 15 U.S.C. § 1692(k)(c). To avail herself of this defense, Ms. Pearlman must establish by a preponderance of the evidence that (1) her alleged violation was unintentional, (2) her alleged violation resulted from a bona fide error, and (3) the bona fide error occurred despite procedures designed to avoid such errors. *Beck v. Maximus, Inc.*, 457 F.3d 291, 297-98 (3d Cir. 2006).

A debt collector only needs to show that its FDCPA violation was unintentional, not that its actions were unintentional. *Kort v. Diversified Collection Servs.*, 394 F.3d 530, 537 (7th Cir. 2005). To hold otherwise would effectively negate the bona fide error defense. *Lewis v. ACB Bus. Servs.*, 135 F.3d 389, 402 (6th Cir. 1998). In this case, Ms. Pearlman did not intend to violate the FDCPA, as evidenced by her withdrawing the debt collection suit against Ms. Freamon shortly after learning Midland had previously sued her on the same debt. Pearlman Dep. at 1.

The “bona fide error” included in 15 U.S.C. § 1692(k)(c) refers to “clerical or factual mistakes” because it is easier for debt collectors to implement procedures to avoid clerical errors

Asher Young – Writing Sample

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than those applicable to legal reasoning. *Jerman v. Carlisle, McNellie, Rini, Kramer & Ulrich, L.P.A.*, 559 U.S. 573, 587, 130 S. Ct. 1605, 1614-15 (2010). A clerical error is “merely of recitation, of the sort that a clerk or amanuensis might commit, mechanical in error.” *United States v. Clark*, 671 F. App'x 25, 25-26 (3d Cir. 2016). Because it was caused by a spelling error by the Philadelphia Court of Common Pleas in the case caption of the civil docket report for Midland’s prior lawsuit against Ms. Freamon, Ms. Pearlman’s error must be considered clerical in nature. Pierce Dep. at 2; Freamon Complaint at Ex. A.

1.1 Ms. Pearlman did not intend to violate the FDCPA and promptly withdrew the lawsuit when she learned Midland had previously sued Ms. Freamon on the same debt.

To avail herself of the “bona fide error” defense included in U.S.C. § 1692(k)(c), Ms. Pearlman “must only show that the [FDCPA] violation was unintentional, not that the [lawsuit] itself was unintentional.” *Lewis v. ACB Bus. Servs.*, 135 F.3d 389, 402 (6th Cir. 1998) (holding that defendant debt collector did not violate the FDCPA by making a collection call to debtor where debtor’s account had been miscoded as a new referral instead of a reopening). Deliberately taking a debt collection action against a debtor, despite its “intentional” nature, does not negate the bona fide error defense. *Kort v. Diversified Collection Servs.*, 394 F.3d 530, 537 (7th Cir. 2005). The Tenth Circuit has determined this to be “the only workable interpretation of the intent prong,” since determining “intent” ultimately “becomes principally a credibility question as to the defendants’ subjective intent to violate the [FDCPA].” *Johnson v. Riddle*, 443 F.3d 723, 728 (10th Cir. 2006).

Ms. Pearlman is aware of the FDCPA and regularly attends the Pennsylvania Bar Association’s training on the statute. Pearlman Dep. at 4. She is also an active member of ACA International, a trade group that helps debt collectors comply with and implement the Act.

Asher Young – Writing Sample

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Pearlman Dep. at 4; *FDCPA Compliance Center*, ACA International. (2022), <https://www.acainternational.org/compliance/fdcpa-compliance-center/>. When she learned that Midland had previously filed a lawsuit against Ms. Freamon on the same debt, Ms. Pearlman withdrew her complaint. Pearlman Dep. at 1. Further, Ms. Pearlman employs several procedures to avoid violating the FDCPA, and has previously declined to proceed with cases where Midland had previously sued a debtor. Pearlman Dep. 3-4.

Some courts have labeled the intent prong of the “bona fide error” defense a “subjective” test, instead choosing to focus their analysis on the latter two “objective” prongs of the test to determine whether a debt collector is entitled to the defense as a matter of law. *Johnson v. Riddle*, 443 F.3d 723, 728-29 (10th Cir. 2006). See also *Rush v. Portfolio Recovery Assocs. LLC*, 977 F. Supp. 2d 414, 427 (D.N.J. 2013). There is no evidence in the record to show Ms. Pearlman’s alleged FDCPA violation was intentional, and her dedication to FDCPA education and her actions as an attorney in other prospective debt collection lawsuits make it clear she did not intend to violate the Act in this case.

1.2 Ms. Pearlman’s alleged violation was the result of a clerical error in the Philadelphia Court of Common Pleas’ online docket system.

FDCPA violations are forgivable under U.S.C. § 1692(k)(c) where they result from “clerical or factual mistakes,” not mistakes of law. *Daubert v. NRA Grp., LLC*, 861 F.3d 382, 394 (3d Cir. 2017). A clerical mistake is one that “involves a failure to accurately record a statement or action by the court or one of the parties.” *United States v. Bennett*, 423 F.3d 271, 277-78 (3d Cir. 2005). The Supreme Court has specified that U.S.C. § 1692(k)(c) applies to clerical or factual mistakes because the statute attempts to evaluate “mechanical or other such ‘regular orderly’ steps to avoid mistakes—for instance, the kind of internal controls a debt collector might adopt to ensure

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its employees do not ... make false representations as to the amount of a debt.” *Jerman v. Carlisle, McNeillie, Rini, Kramer & Ulrich, L.P.A.*, 559 U.S. 573, 587, 130 S. Ct. 1605, 1614 (2010).

In this case, the Philadelphia Court of Common Pleas misspelled Ms. Freamon’s surname as “Freeman” in the case caption of the civil docket report for Midland’s prior lawsuit against Ms. Freamon. Pierce Dep. at 2; Freamon Complaint at Ex. A. This type of “failure to accurately record a statement ... by the court” is most aptly characterized as a clerical error. *Bennett*, 423 F.3d at 271. There is no evidence in the record that shows Ms. Pearlman committed any legal errors, defined by the Supreme Court as any error that is the “product of an attorney’s erroneous interpretation of the FDCPA, [such as misinterpreting the] Act’s definition of ‘debt collector.’” *Jerman*, 559 U.S. at 595. Rather, Ms. Pearlman’s alleged FDCPA violation was caused by a mere spelling discrepancy, making it a clerical error covered by U.S.C. § 1692(k)(c).

In *Ross*, the Seventh Circuit ruled in favor of a debt collector in a similar case involving spelling discrepancies. *Ross v. RJM Acquisitions Funding LLC*, 480 F.3d 493 (7th Cir. 2007) (granting summary judgment for defendant debt collector under the “bona fide error” defense where it mailed multiple dunning letters to a debtor before realizing the creditor had spelled the debtor’s name differently from the bankruptcy court, which had previously discharged the debt). Before filing a debt collection suit, Ms. Pearlman directs her legal assistant to search the debtor’s name in the relevant county’s court records to make sure they have not previously been sued. Pearlman Dep. at 3. Similarly, the debt collector in *Ross* was “mindful of its legal duty not to dun a discharged bankrupt, and to that end conducted a computerized search of bankruptcies.” *Ross*, 480 F.3d at 497. However, because the official bankruptcy records in *Ross* were filed under “Delisa Ross” and the name on the account sold to the debt collector was “Lisa Ross,” the debt collector’s computerized search failed to return any results showing the debt had been

Asher Young – Writing Sample

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discharged. *Id.* at 497. Similarly, Ms. Pearlman’s search of Philadelphia court records was based on the spelling of Ms. Freamon’s name provided to her by Midland Funding. *Pierce* Dep. at 2.

In *Ross*, the Seventh Circuit found the debt collector’s spelling discrepancy to be a “bona fide error” and immediately proceeded to an analysis of whether its safeguard procedures were “reasonably adapted” to avoid any such error. *Ross*, 480 F.3d at 497. Ms. Pearlman’s alleged FDCPA violation was similarly due to the failure of a computerized search to return any prior cases involving the defendant debtor, and thus may be characterized similarly as a “clerical” and “bona fide” error.

2. Ms. Pearlman is entitled to summary judgment because she maintained procedures reasonably adapted to avoid unintentional errors that might result in FDCPA violations.

A debt collector may not be held liable for violating the FDCPA where she did not intend to violate the FDCPA, and where her alleged violations resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error. 15 U.S.C. § 1692(k)(c). The “bona fide error” defense does not require a debt collector to employ “state of the art” procedures to avoid errors that might violate the FDCPA. *Ross*, 480 F.3d at 498. Rather, the FDCPA “only requires collectors to adopt reasonable procedures” to avoid such mistakes. *Hyman v. Tate*, 362 F.3d 965, 968 (7th Cir. 2004).

In this case, the court must determine whether Ms. Pearlman adopted “reasonable procedures” to avoid making clerical errors. Ms. Pearlman’s safeguard procedures include: (1) working with her legal assistant to carefully review Philadelphia’s court records for the last names of all potential defendants; (2) holding an agreement with Midland Funding that all of its debt collection suits are based on legitimate and collectible debts with no bankruptcy discharges or any other type of problem; and (3) attending annual FDCPA trainings conducted by the

Asher Young – Writing Sample

2121 Market St., Apt. 314, Philadelphia, PA 19103 • asher.young@temple.edu • (413)-687-5751

Pennsylvania Bar Institute, the official Continuing Legal Education Arm of the Pennsylvania Bar Association. Pearlman Dep. at 4; *About PBI*, Pennsylvania Bar Institute. (March 2022), <https://www.pbi.org/about-pbi>.

In assessing Ms. Pearlman’s procedures, the court should take guidance from the Supreme Court and focus “on the orderliness and regularity of the debt collector’s error-prevention steps, not on the number or complexity of those steps.” *Abdollahzadeh v. Mandarich Law Grp., LLP*, 922 F.3d 810, 817 (7th Cir. 2019) (quoting *Jerman*, 599 U.S. at 587) (holding the bona fide error defense precluded debt collector’s liability for FDCPA violations because its violations were due to incorrect information received from the debt buyer, despite reasonable, regular, and orderly error-prevention procedures aimed at avoiding untimely collection attempts). Regardless of whether a debt collector’s procedures are “imperfect” or “unquestionably simple,” the court may still find they qualify under 15 U.S.C. § 1692(k)(c) if they are regular and orderly error-prevention procedures. *Abdollahzadeh*, 922 F.3d at 817.

Ms. Pearlman regularly conducts orderly error-prevention procedures ahead of filing debt collection cases. Pearlman Dep. at 3-4. She directs her legal assistant, Mr. Pierce, to carefully review the relevant court dockets before filing debt collection suits to make sure there are no previous cases filed against that debtor. Pearlman Dep. at 3-4. In his deposition, Mr. Pierce also described his duties in detail in a “typical debt collection case,” including searching the computerized court records in whatever county the debtor lives to make sure there are no bankruptcy filings by the debtor or previous cases with the debtor. Pierce Dep. at 1-2. Additionally, since debt collection cases became the “main part” of Ms. Pearlman’s practice in 2020, she has regularly attended the Pennsylvania Bar Institute’s August FDCPA training. Pearlman Dep. at 5.

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Conducting a computerized search for bankruptcies under a debtor's name is a procedure "reasonably adapted" to avoid clerical errors that might violate the FDCPA. *Ross v. RJM Acquisitions Funding LLC*, 480 F.3d 493 (7th Cir. 2007). Further, in *Hyman*, the Seventh Circuit granted summary judgment for the debt collector where it relied on its creditor not to refer debtors who were in bankruptcy, and where it immediately ceased collection efforts once it learned of any bankruptcy filings. *Hyman v. Tate*, 362 F.3d 965 (7th Cir. 2004). The bona fide error defense is also available to debt collectors who reasonably rely on the opinion of an organization with expertise in the relevant area of law. *Ruth v. Triumph P'Ships*, 577 F.3d 790, 805 (7th Cir. 2009).

2.1 Ms. Pearlman directs her legal assistant to carefully review Philadelphia court records for the last names of all potential defendants to make sure she will not violate the FDPCA by filing a lawsuit to collect an unenforceable debt.

In determining whether a debt collector's precautions are "reasonable," courts conduct an "objective" inquiry into whether any precautions were actually implemented, and whether such precautions were reasonably adapted to avoid the specific error at issue. *Rush v. Portfolio Recovery Assocs. LLC*, 977 F. Supp. 2d 414, 427 (D.N.J. 2013). Notably, the bona fide error defense does not require debt collectors to take every conceivable precaution to avoid errors, but rather only requires reasonable precautions. *Beck v. Maximus, Inc.*, 457 F.3d 291, 299 (3d Cir. 2006).

A computerized search for bankruptcies is a reasonable procedure to avoid dunning a discharged debt. *Ross v. RJM Acquisitions Funding LLC*, 480 F.3d 493, 497 (7th Cir. 2007). In *Ross*, the attorney representing the debt collector outsourced its computerized search for bankruptcies under the debtor's name to another firm. *Id.* at 497. In determining this procedure to be reasonable, the court weighed the cost of investing in more advanced search procedures against

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the “slight aggregate harms resulting from the handful of dunning letters that modest procedures occasionally let through the sieve.” *Id.* at 498.

Ms. Pearlman is aware that Midland Funding files many lawsuits, and she undertakes computerized search procedures like those in *Ross* to avoid any errors that would violate the FDCPA. Pearlman Dep. at 3. Ms. Pearlman directs her legal assistant, Mr. Wendell Pierce, to carefully review the dockets from the Philadelphia Court of Common Pleas to avoid suing debtors whom Midland Funding has already sued. Pearlman Dep. at 3-4. Specifically, Ms. Pearlman directs Mr. Pierce to run the defendant’s name through the dockets to make sure there are no previous cases filed against that defendant. Pearlman Dep. at 3. As recently as October 2021, Ms. Pearlman successfully used her procedure to avoid filing a lawsuit against a debtor who had previously been sued by Midland Funding. Pearlman Dep. at 3. Given her success in preventing lawsuits from being filed against debtors previously sued by Midland, and based on the court’s determination in *Ross*, Ms. Pearlman’s search procedure should objectively be considered a “reasonable procedure” to avoid making such an error.

In *Ross*, the Seventh Circuit also held “reasonable” procedures cannot be equated to “state of the art” procedures “at the technological frontier.” *Ross*, 480 F.3d at 498. The Seventh Circuit reasoned that if debt collectors were required to employ such “state of the art” procedures, those who failed to immediately purchase more advanced technological functions would be sued for committing unintentional and bona fide errors whenever a more powerful search program came on the market. *Id.* at 498.

The court in *Ross* derived its reasoning from *Hyman v. Tate*, where a debt collector was protected by the bona fide error defense even where it did not establish proactive procedures, like checking court records, to ensure the accounts it received for collection were not in bankruptcy.

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Hyman v. Tate, 362 F.3d 965, 968 (7th Cir. 2004). Because the debt collector in *Hyman* had other procedures in place similar to Ms. Pearlman’s, such as stopping collection activities in the event an unintentional error occurred, the debt collector was not required to employ an “expensive review system” to avail itself of the bona fide error defense. *Id.* at 968.

Although Ms. Pearlman shares her office expenses with two other attorneys, Mr. Chris Partlow and Mr. Odell Watkins, she effectively works as a solo practitioner by billing her own clients and keeping her own fees. Pearlman Dep. at 3. Ms. Pearlman already pays \$300 per month to access a subscription to Lexis, which she uses to access court records from counties outside of Philadelphia. Pearlman Dep. at 3. Meanwhile, it is free to access online docket records from the Philadelphia Court of Common Pleas through its official website. Pearlman Dep. at 3.

Ms. Pearlman does not have a subscription to Bloomberg Law, which also offers access to Philadelphia’s court records. Pearlman Dep. at 4. Bloomberg Law does not publish its monthly subscription costs; however, as of August 2015, Bloomberg was estimated to cost a solo practitioner approximately \$475 per month, with a minimum contract length of two years. Lisa Solomon, *Choosing the Right Legal Research Tool for Your Firm*, MyCase, at 4. (August 2015), https://info.abovethelaw.com/hubfs/MyCase_eBook_Choosing_the_Right_Legal_Research_Tool_for_Your_Firm.pdf. Based on this estimate, accessing Bloomberg Law would more than double Ms. Pearlman’s current subscription expenses. This additional cost should be considered the type of “expensive review system” explicitly not required by the court in *Hyman*. *Hyman*, 362 F.3d at 968. Thus, Ms. Pearlman’s failure to subscribe to Bloomberg Law should not negate her “bona fide error” defense in this case.

In *Ross*, the court determined that even if a more complex search algorithm would have helped the debt collector find the debtor’s name, “it would not make [the debtor’s] case.” *Ross*,

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480 F.3d at 497. A debt collector’s procedures must only be considered “reasonably adapted” to avoid unintentional and bona fide errors, rather than “state of the art” practices. *Id.* at 497-498. Although Bloomberg Law offers a more advanced Boolean search function not available in Philadelphia’s online docket, there is nothing in the record that suggests this function would have found the spelling error that caused Ms. Pearlman’s alleged FDCPA violation. Lisa Solomon, *Choosing the Right Legal Research Tool for Your Firm*, MyCase, at 4. (August 2015), https://info.abovethelaw.com/hubfs/MyCase_eBook_Choosing_the_Right_Legal_Research_Tool_for_Your_Firm.pdf. Given the regularity and orderliness of her existing computerized search procedures, Ms. Pearlman is protected by the “bona fide error” defense as a matter of law in this case.

2.2 Ms. Pearlman maintains an agreement with Midland that all files it transmits for collection are legitimate, collectible debts with no bankruptcy discharges or any other type of problem.

The bona fide error defense “does not demand perfection” of debt collectors and does not require debt collectors to independently verify the validity of the debt. *Abdollahzadeh v. Mandarin Law Grp., LLP*, 922 F.3d 810, 817 (7th Cir. 2019) (citing *Hyman*, 362 F.3d at 968). Instead, a debt collector has developed a “reasonably adapted procedure” where it has an “understanding with the firms that sell it debts for collection that they would not knowingly sell” discharged or otherwise uncollectible debts. *Ross*, 480 F.3d at 497. In this case, Ms. Pearlman has an agreement with Midland that all files it transmits for collection are legitimate, collectible debts with no bankruptcy discharges or any other type of problem. Pearlman Dep. at 4. Combined with her other procedures, such as computerized searches of debtors’ names and attending FDCPA trainings, this agreement qualifies as a procedure reasonably adapted to avoid clerical errors.

In *Abdollahzadeh*, the Seventh Circuit held that a debt collector law firm was protected by the “bona fide error” defense even where it relied on account information provided by its creditor

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client that “consistently (though incorrectly) identified the last-payment date” of the debt in question. *Abdollahzadeh*, 922 F.3d at 816. The plaintiff debtor in *Abdollahzadeh* unsuccessfully argued that the “bona fide error” defense does not protect debt collectors who unreasonably rely on a creditor’s representation of debts. *Id.* at 814 (citing *McCullough v. Johnson, Rodenburg & Lauinger, LLC*, 637 F.3d 939, 949 (9th Cir. 2011)). Specifically, the debtor in *Abdollahzadeh* relied on *McCullough* to argue that the presence of an “accuracy disclaimer” in the debt collector’s agreement with its client made it unreasonable as a matter of law for the debt collector to rely on its client’s data. *Abdollahzadeh*, 922 F.3d at 816. The Seventh Circuit, however, rejected this argument, pointing out that the debt collector in *McCullough* relied on an email from its creditor that contradicted previous information in the creditor’s own account file, rather than simply relying on incorrect information originally transmitted by the creditor. *Abdollahzadeh*, 922 F.3d at 816 (citing *McCullough*, 637 F.3d at 945).

In this case, there is nothing in the record to suggest there is any sort of “accuracy disclaimer” in Ms. Pearlman’s agreement with Midland, which the Ninth Circuit in *McCullough* cited as a factor in determining the debt collector’s reliance on its creditor to be “unreasonable as a matter of law.” *McCullough*, 637 F.3d at 949. Further, like the debt collector in *Abdollahzadeh*, Ms. Pearlman did not receive any communication from Midland that contradicted information in its own account file; instead, she merely relied on the account information itself. *Abdollahzadeh*, 922 F.3d at 816; Pearlman Dep. at 2.

The Ninth Circuit generally holds debt collectors to a stricter standard, explaining that debt collectors have an “affirmative obligation” to maintain reasonable procedures beyond relying on a creditor’s representation of debts. *Reichert v. Nat’l Credit Sys.*, 531 F.3d 1002, 1004 (9th Cir. 2008) (ruling debt collector could not rely solely on creditor’s provision of accurate information in the

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past as a substitute for the maintenance of adequate procedures to avoid future mistakes). However, even under this heightened standard, Ms. Pearlman would be entitled to the “bona fide error” defense because she maintains other procedures reasonably adapted to avoid discoverable errors, such as her computerized searches and regular attendance at FDCPA trainings. Pearlman Dep. at 4-5.

In *Reichert*, the debt collector unsuccessfully argued that the creditor's submission of accurate information in the past entitled the debt collector to reasonably rely on the creditor's representations of debts. *Reichert*, 531 F.3d at 1004. There was no evidence the debt collector in *Reichert* maintained any safeguard procedures other than a mere “conclusory declaration” stating that it maintained such procedures. *Id.* at 1007. Ms. Pearlman’s case differs substantially, given that she reviews local court dockets to confirm whether Midland’s debts are collectible, and she regularly attends FDCPA trainings. Pearlman Dep. at 4-5. The evidence in the record shows that Ms. Pearlman’s safeguard practices go well above the “mere assertion” of reasonably adapted procedures offered by the debt collector in *Reichert*. *Reichert*, 531 F.3d at 1007. Even under strict standards, Ms. Pearlman’s procedures show she is entitled to the “bona fide error” defense.

(The last portion of the argument and conclusion have been cut for length.)

Applicant Details

First Name **Patrick**
 Last Name **Zancolli**
 Citizenship Status **U. S. Citizen**
 Email Address patrick.zancolli@temple.edu
 Address

Address
Street
1126 Buttonwood Street, Unit C
City
Philadelphia
State/Territory
Pennsylvania
Zip
19123
Country
United States

Contact Phone Number **2674240510**

Applicant Education

BA/BS From **University of Pennsylvania**
 Date of BA/BS **May 2018**
 JD/LLB From **Temple University--James E. Beasley School of Law**
http://www.nalplawsonline.org/ndlsdir_search_results.asp?lscd=23905&yr=2011
 Date of JD/LLB **May 25, 2023**
 Class Rank **20%**
 Law Review/Journal **Yes**
 Journal(s) **Temple Law Review**
 Moot Court Experience **No**

Bar Admission

Prior Judicial Experience

Judicial
Internships/ **Yes**
Externships
Post-graduate
Judicial Law **No**
Clerk

Specialized Work Experience

Recommenders

Carpenter, Leonore
leonorec@temple.edu
Ramji-Nogales, Jaya
Jaya.Ramji-Nogales@temple.edu
215-204-6430
Knauer, Nancy
nancy.knauer@temple.edu
215-204-1688

This applicant has certified that all data entered in this profile and any application documents are true and correct.

PATRICK ZANCOLLI

1126 Buttonwood St., Unit C, Philadelphia, PA 19123 | (267) 424-0510 | patrick.zancolli@temple.edu

May 30, 2023

The Honorable Juan R. Sanchez
United States District Court for the Eastern District of Pennsylvania
James A. Byrne U.S. Courthouse
601 Market Street
Philadelphia, PA 19106

Dear Judge Sanchez:

I am applying for a clerkship in your chambers for the 2024-2025 term or later as convenient for you. After graduation this May from Temple University Beasley School of Law, I will join the Philadelphia office of Troutman Pepper Hamilton Sanders. Because of my year-long placement in the Honorable Robert Kugler's chambers through the Temple Federal Judicial Clerkship Honors Program and my tenure as Managing Editor of *Temple Law Review*, I offer experience working in federal court and producing high quality legal writing.

I am interested in serving as your clerk because of your commitment to public service and strong reputation in the Eastern District of Pennsylvania. As a former public-school teacher, it is important to me to work for someone who shares a public interest-oriented mindset. I understand based on conversations with Temple Law colleagues that you are an excellent teacher and provide your law clerks with great responsibility, which I imagine would create a formative clerkship experience for me. As a clerk in your chambers, I will bring the strong legal skillset I developed throughout law school and my prior work experience as a fifth-grade teacher.

During my time as a law student, I excelled academically and sharpened my professional skills. Throughout law school, my grade point average consistently positioned me within the top twenty percent of the class. This academic success led to my placement through the Federal Judicial Clerkship Program in Judge Kugler's chambers, where I drafted multiple opinions on dispositive motions filed with the Court. Furthermore, as Managing Editor of *Temple Law Review*, I regularly participated in final reads of academic pieces to ensure they complied with the Bluebook and other relevant standards for quality legal scholarship before publication. My additional responsibilities included guiding Staff Editors toward completion of their Student Notes/Comments by regularly providing them with thorough written feedback.

Prior to law school, I gained invaluable work experience as a fifth-grade teacher, which has benefited my approach to the law. I demonstrate a level of maturity indicative of someone who was formerly responsible for seventy-five middle school students daily. I also can deeply internalize information and effectively communicate it. I relied heavily on this ability when I developed my lesson plans and instructed students. I have since adapted this skill to working with the law, which has enabled me to correctly understand complex legal issues and clearly share this understanding with supervising attorneys.

On a personal note, I consider myself a passionate Philadelphian who enjoys taking advantage of all that the city has to offer. I spend most weeknights running along the Schuylkill River Trail. I also root on the Phillies, Eagles, and Sixers whenever there is a game.

Thank you for your time and consideration, and I welcome an interview to further discuss my qualifications.

Respectfully,



Patrick Zancolli

PATRICK ZANCOLLI

1126 Buttonwood St., Unit C, Philadelphia, PA 19123 | (267) 424-0510 | patrick.zancolli@temple.edu

EDUCATION

TEMPLE UNIVERSITY BEASLEY SCHOOL OF LAW	Philadelphia, PA
Juris Doctor, <i>magna cum laude</i>	May 2023
<i>Honors:</i>	Federal Judicial Clerkship Honors Program
	Comment Published in <i>Temple Law Review</i> , Volume 95
	<i>Temple Law Review</i> , Managing Editor
	Beasley Scholar (full-tuition scholarship recipient)
	The Law and Public Policy Scholars Graduation Awardee
<i>Presentations:</i>	Taxation Panel, The Intersection of Law & Public Policy: 2022 Update (Philadelphia, PA)
	Tax Law and Inequalities, Global Meeting on Law and Society 2022 (Lisbon, Portugal)
UNIVERSITY OF PENNSYLVANIA COLLEGE OF ARTS AND SCIENCES	Philadelphia, PA
Bachelor of Arts, <i>magna cum laude</i> , with distinction in Political Science	May 2018

EXPERIENCE

THE HONORABLE ROBERT B. KUGLER	Camden, NJ
<i>Judicial Intern</i>	August 2022 – April 2023
Reviewed filings in federal civil matters before the Judge and drafted five opinions on dispositive motions. Observed a jury trial, sentencing hearings, and other proceedings in the Judge's courtroom.	
TEMPLE UNIVERSITY BEASLEY SCHOOL OF LAW	Philadelphia, PA
<i>Research Assistant to Professor Jaya Ramji-Nogales</i>	August 2021 – December 2022
Collaborated with the Professor on best practices for teaching Civil Procedure I to a section of first-year law students.	
Researched issue and claim preclusion and suggested course revisions for most effective instruction on legal doctrines.	
Guided student mastery of course material through weekly office hour sessions and written feedback on assignments.	
TROUTMAN PEPPER HAMILTON SANDERS LLP	Philadelphia, PA
<i>Summer Associate</i>	May 2022 – July 2022
Researched legal issues for business litigation matters and provided findings in nine written deliverables. Reviewed and created outline of medical records produced in case discovery. Advised on arbitration provision language in a corporate agreement. Drafted pleadings to remove a state court matter to federal court.	
EDUCATION LAW CENTER	Philadelphia, PA
<i>Legal Intern</i>	January 2022 – April 2022
Facilitated direct representation work by handling intake calls for 18 clients. Assisted with witness cross-examination preparation in historic school funding litigation. Reviewed several hundred documents and participated in a deposition for a class action lawsuit.	
U.S. DEPARTMENT OF JUSTICE	Washington, DC
<i>Intern, Tax Division</i>	June 2021 – August 2021
Researched complex legal issues in topics such as tax, bankruptcy, and civil procedure. Drafted seven written deliverables, including memoranda and motions, for appellate attorneys. Strategized in oral argument preparation.	
TEACH FOR AMERICA (TFA)	Washington, DC
<i>Elementary Educator</i>	June 2018 – May 2020
Taught English/Language Arts to three sections of 25 fifth grade students at a public charter school.	

INTERESTS

Running long distance races, rooting on Philadelphia sports teams, and keeping up with the Marvel Cinematic Universe.

Patrick A. Zancolli

Student Academic Transcript

Academic Transcript

Transcript Level

Law

Transcript Type

Advising Transcript

Student Information

Institution Credit

Transcript Totals

This is not an official transcript. Courses which are in progress may also be included on this transcript.

Student Information

Name

Patrick A. Zancolli

Student Type

Continuing Degree
Seeking

Curriculum Information

Current Program : Juris Doctor

Program

Law--Full Time

College

Law, Beasley School

Campus

Main

Major and
DepartmentLaw--Full Time, Law:
Beasley School of
Law

5/30/23, 10:03 AM

Academic Transcript

Institution Credit

Term : 2020 Fall

College

Law, Beasley School

Major

Law--Full Time

Student Type

First Time
Professional

Academic Standing

Not Calculated

Additional Standing

Dean's List

Term Comments

Semester Notations:

DCP (Legal Research
& Writing I)

Subject	Course	Campus	Level	Title	Grade	Credit Hours	Quality Points	R	CEU Contact Hours
JUDO	0402	Main	LW	Civil Procedure I Ramji-Nogales, J	A-	4.000	14.68		
JUDO	0406	Main	LW	Contracts Nguyen, T	B+	4.000	13.32		
JUDO	0414	Main	LW	Legal Research & Writing Carpenter, L	B	3.000	9.00		
JUDO	0420	Main	LW	Torts Rahdert, M	A-	4.000	14.68		
JUDO	0437	Main	LW	Intro to Transactional Skills Monroe, A	S	1.000	0.00		

Term Totals	Attempt Hours	Passed Hours	CEU Hours	GPA Hours	Quality Points	GPA
Current Term	16.000	16.000	16.000	15.000	51.68	3.45
Cumulative	16.000	16.000	16.000	15.000	51.68	3.45

Term : 2021 Spring

5/30/23, 10:03 AM

Academic Transcript

College

Law, Beasley School

Major

Law--Full Time

Student Type

Continuing Degree Seeking

Additional Standing

Dean's List

Term Comments

Semester Notations:

DCP (Criminal Law I)

OOA (Legal Research & Writing II)

Subject	Course	Campus	Level	Title	Grade	Credit Hours	Quality Points	R	CEU Contact Hours
JUDO	0404	Main	LW	Constitutional Law Dunoff, J	B+	4.000	13.32		
JUDO	0410	Main	LW	Criminal Law I Deguzman, M	B	3.000	9.00		
JUDO	0414	Main	LW	Legal Research & Writing Carpenter, L	A	2.000	8.00		
JUDO	0418	Main	LW	Property Hollis, D	A-	4.000	14.68		
JUDO	0600	Main	LW	Taxation Monroe, A	B+	3.000	9.99		

Term Totals	Attempt Hours	Passed Hours	CEU Hours	GPA Hours	Quality Points	GPA
Current Term	16.000	16.000	16.000	16.000	54.99	3.44
Cumulative	32.000	32.000	32.000	31.000	106.67	3.44

Term : 2021 Summer I

College

Law, Beasley School

Major

Law

Student Type

Continuing Degree Seeking

Term Comments

Semester Notations:

DCP (Institutional Decision Making)

5/30/23, 10:03 AM

Academic Transcript

Subject	Course	Campus	Level	Title	Grade	Credit Hours	Quality Points	R	CEU Contact Hours
JUDO	W510	Main	LW	Institutional Decision Making Knauer, N	A	3.000	12.00		
JUDO	W910	Main	LW	Law and Public Policy Knauer, N	A	3.000	12.00		

Term Totals	Attempt Hours	Passed Hours	CEU Hours	GPA Hours	Quality Points	GPA
Current Term	6.000	6.000	6.000	6.000	24.00	4.00
Cumulative	38.000	38.000	38.000	37.000	130.67	3.53

Term : 2021 Fall

College

Law, Beasley School

Major

Law--Full Time

Student Type

Continuing Degree Seeking

Additional Standing

Dean's List

Term Comments

Semester Notations:

DCP (Trial Advocacy I)

DCP (Law & Public Policy II)

Subject	Course	Campus	Level	Title	Grade	Credit Hours	Quality Points	R	CEU Contact Hours
JUDO	0460	Main	LW	Trial Advocacy I Braccia, M	S+	2.000	0.00		
JUDO	0532	Main	LW	Criminal Procedure I Hudson, K	B+	3.000	9.99		
JUDO	0540	Main	LW	Evidence Epstein, J	A-	3.000	11.01		
JUDO	0905	Main	LW	Temple Law Review Reinstein, R	CR	2.000	0.00		
JUDO	1025	Main	LW	Law and Public Policy II Knauer, N	A	3.000	12.00		

Term Totals	Attempt Hours	Passed Hours	CEU Hours	GPA Hours	Quality Points	GPA
Current Term	13.000	13.000	13.000	9.000	33.00	3.67
Cumulative	51.000	51.000	51.000	46.000	163.67	3.56

5/30/23, 10:03 AM

Academic Transcript

Term : 2022 Spring

College

Law, Beasley School

Major

Law--Full Time

Student TypeContinuing Degree
Seeking**Academic Standing**

Not Calculated

Subject	Course	Campus	Level	Title	Grade	Credit Hours	Quality Points	R	CEU Contact Hours
JUDO	0416	Main	LW	Professional Responsibility Wells, C	B+	3.000	9.99		
JUDO	0461	Main	LW	Trial Advocacy II Hockeimer, H	S+	3.000	0.00		
JUDO	0517	Main	LW	Civil Procedure II Jacobsen, K	A-	2.000	7.34		
JUDO	0905	Main	LW	Temple Law Review Little, L	CR	1.000	0.00		
JUDO	1021	Main	LW	Spring 2022 - Tax Policy & Admin Colloquium Abreu, A	B-	1.000	2.67		
JUDO	P600	Main	LW	Practicum: Public Interest Law Murray, K	S	3.000	0.00		

Term Totals	Attempt Hours	Passed Hours	CEU Hours	GPA Hours	Quality Points	GPA
Current Term	13.000	13.000	13.000	6.000	20.00	3.33
Cumulative	64.000	64.000	64.000	52.000	183.67	3.53

Term : 2022 Fall

College

Law, Beasley School

Major

Law--Full Time

Student TypeContinuing Degree
Seeking**Additional Standing**

Dean's List

Term Comments

Semester Notations:

DCP (Corporations)

5/30/23, 10:03 AM

Academic Transcript

Subject	Course	Campus	Level	Title	Grade	Credit Hours	Quality Points	R	CEU Contact Hours
JUDO	0508	Main	LW	Corporations Lin, C	A-	3.000	11.01		
JUDO	0726	Main	LW	Fed Judicial Clerkship Goldberg, M	S+	3.000	0.00		
JUDO	0804	Main	LW	Education Law Murray, K	A	3.000	12.00		
JUDO	0901	Main	LW	Guided Research II Ramji-Nogales, J	A	3.000	12.00		
JUDO	0905	Main	LW	Temple Law Review Reinstein, R	CR	1.000	0.00		

Term Totals	Attempt Hours	Passed Hours	CEU Hours	GPA Hours	Quality Points	GPA
Current Term	13.000	13.000	13.000	9.000	35.01	3.89
Cumulative	77.000	77.000	77.000	61.000	218.68	3.58

Term : 2023 Spring

College

Law, Beasley School

Major

Law--Full Time

Student Type

Continuing Degree Seeking

Academic Standing

Not Calculated

Last Academic Standing

Not Calculated

Subject	Course	Campus	Level	Title	Grade	Credit Hours	Quality Points	R	CEU Contact Hours
JUDO	0400	Main	LW	Administrative Law Green, R	A-	3.000	11.01		
JUDO	0726	Main	LW	Fed Judicial Clerkship Goldberg, M	S+	3.000	0.00		
JUDO	0905	Main	LW	Temple Law Review Little, L	CR	2.000	0.00		
JUDO	1006	Main	LW	Political & Civil Rights Knauer, N	A	3.000	12.00		

Term Totals	Attempt Hours	Passed Hours	CEU Hours	GPA Hours	Quality Points	GPA
Current Term	11.000	11.000	11.000	6.000	23.01	3.84
Cumulative	88.000	88.000	88.000	67.000	241.69	3.61

5/30/23, 10:03 AM

Academic Transcript

Transcript Totals

Transcript Totals - (Law)	Attempt Hours	Passed Hours	CEU Hours	GPA Hours	Quality Points	GPA
Total Institution	88.000	88.000	88.000	67.000	241.69	3.61
Total Transfer	0.000	0.000	0.000	0.000	0.00	0.00
Overall	88.000	88.000	88.000	67.00	241.69	3.61

June 08, 2023

The Honorable Juan Sanchez
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

Dear Judge Sanchez:

I am pleased to recommend third-year Temple Law student Patrick Zancolli for a clerkship in your chambers. Mr. Zancolli is a talented, motivated, and enthusiastic student who possesses exceptional research and writing skills. I give him my highest recommendation.

I have known Mr. Zancolli since August 2020, in my capacity as his first-year Legal Research and Writing professor at Temple Law (I have since moved on to Rutgers Law – Camden). As you may know, Temple Law's legal writing program is among the most rigorous in the nation. Students are given extensive feedback on their work, and must work closely with their professor in multiple conference sessions to improve their skills as the semester progresses. In the Fall semester, students are taught predictive writing and are graded on the quality of an office memorandum. In the Spring, students learn persuasive writing and are graded on the quality of a trial-level brief in support of a motion.

During the 2020/2021 academic year, all Temple Law classes – including both semesters of LRW – were held remotely. This circumstance presented enormous challenges to both students and law school faculty. As faculty, we were forced to adapt to a completely new platform for teaching classes that, like LRW, were intended to be highly interactive. The students were challenged to maintain focus in an environment that was both anxiety-producing and also, frankly, far more boring and isolating than the normal law school experience. Many students struggled, both with maintaining focus and with maintaining their mental health.

However, despite these difficulties, Mr. Zancolli persevered, and proved himself an adaptable, committed learner. He was, by far, one of the most engaged students that year, regularly participating in class and attending Zoom office hours on a regular basis. He earned a B in my class in the Fall, which was reflective of a well written and researched final assignment. However, in the Spring semester, Mr. Zancolli, who was not satisfied with B-level work, worked even harder. During that semester, he truly excelled, earning an A in the class and an Outstanding Oral Argument transcript notation. I have complete confidence in Mr. Zancolli's ability to produce written work of the highest quality.

Beyond possessing excellent research and writing skills, Mr. Zancolli possesses additional personal qualities that I believe would make him a wonderful clerk. As noted above, he appeared undaunted by the serious challenges posed by online learning, and maintained focus and commitment to his work in the face of serious obstacles. He was also consistently disciplined and well organized, completed assignments on time, asked necessary questions, and was always punctual.

In addition, Mr. Zancolli is just a really nice person. He is unfailingly friendly and engaging, and possesses not a shred of arrogance. As a former clerk, I understand how important it is that a clerk be able to interact positively with their co-workers and judge, and I have no doubts whatsoever that Mr. Zancolli would be a welcome addition to your chambers.

I hope that you will strongly consider Patrick Zancolli as a candidate for a clerkship in your chambers. He is an outstanding law student, and I have absolutely no doubt that he will be an equally outstanding clerk. If you have any questions, please feel free to contact me directly on my cell, at 215-385-0977.

Sincerely,

Leonore F. Carpenter
Associate Professor of Law

Leonore Carpenter - leonorec@temple.edu

May 30, 2023

The Honorable Juan Sanchez
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

Dear Judge Sanchez:

I write to recommend Patrick Zancolli most highly for a clerkship in your chambers. I am Associate Dean for Research and the I. Herman Stern Research Professor at Temple University, Beasley School of Law. I first met Patrick as a student in my Civil Procedure I course during fall 2020. Patrick was an outstanding student in my course; he was a frequent and thoughtful contributor to the classroom throughout the semester and visited office hours frequently with questions about the material, demonstrating his deep engagement with the course and his diligent work ethic. Based on both his strength as a student, his interpersonal skills, and his thoughtfulness about how best to support 1Ls, I invited Patrick to be my teaching assistant for Civil Procedure I in the fall of 2021 and renewed that invitation in the fall of 2022 due to his outstanding performance in that role. On the basis of these interactions with him and his excellent performance on my exam, I can state with confidence that Patrick has exceptional analytical skills, excellent writing abilities, a dedicated work ethic, a professional approach to his work and an unfailingly positive demeanor. In short, he would make a terrific addition to your chambers.

Patrick was an exceptionally motivated student who consistently demonstrated his outstanding analytical skills and engagement in my Civil Procedure I class. He was always well prepared for class and asked at least one, and often several, questions during class. These questions were perceptive and thoughtful, and consistently helped me to clarify material for his classmates. When Patrick was on call, he offered considered and astute responses to my questions. He regularly attended my office hours to ask clarifying questions about reading and lecture materials to ensure that he understood the material thoroughly. Throughout these interactions, Patrick was always warm, good-natured and good-humored, and professional. He was mindful to create space for other students to ask questions while at the same time being consistently prepared to ask insightful questions. In class and in office hours, he demonstrated his critical thinking skills, his dedicated work ethic, and his strong interpersonal communication style.

I was particularly impressed with Patrick's ability to incorporate feedback on his work, which bodes extremely well for his success as a lawyer. I assigned my Civil Procedure students an ungraded midterm on which their TAs provided them feedback and I scored them in three ranges – check plus, check, and check minus. Patrick's midterm fell within the check range, which roughly translates to the B range. He took careful note of the feedback from his TA and spoke to me about how to improve his performance. Patrick learned both that he had not answered the call of the question on the midterm, and therefore failed to provide a full answer and also that he needed to use the facts creatively to indicate potential arguments made by each side. He took this feedback and created an action plan to ensure that he did not repeat these mistakes on the final examination. His final exam score, which was an A-, testifies to his ability to learn and grow from feedback. I should note that my exam is a challenging four-hour hypothetical fact pattern that requires students to spot issues, identify the relevant legal rule, apply the salient facts, argue both sides, and organize their analysis carefully, all under serious time pressure. Patrick's score on the exam, in Civil Procedure which as I'm sure you recall is one of the hardest law school courses, demonstrates both his analytical abilities and his devoted work ethic.

Since fall 2020, Patrick has served as a Teaching Assistant for my Civil Procedure I course twice. I first selected him for this role from a competitive application pool of former students due to his analytical abilities and his interpersonal skills, and my decision has been reaffirmed by the thoughtful and intentional way he approaches his duties. I structure my Civil Procedure course so that each teaching assistant works with an assigned group of roughly ten students. Patrick takes the initiative on a regular basis to engage his students and make sure they are aware of the guidance he can provide them – both for the course and as a mentor more generally. Whenever he becomes aware that a student needs more support than he can give in his capacity as a teaching assistant, Patrick is sure to communicate with me about the situation so we can together make sure the student receives the support they need to succeed in the course. These efforts demonstrate the deep commitment he would bring to ensuring your chambers run smoothly and collaboratively.

Through his work as my teaching assistant, I have been impressed by Patrick's ability to distill large amounts of information, including complex legal concepts, and communicate it in language that is digestible for a beginner audience. Patrick and the other teaching assistants lead multiple sessions for the Civil Procedure students on both legally substantive topics and strategic approaches to law school. Based on my observation of these presentations as well as feedback that I have received from students, he presents material, both verbally and in writing, clearly and concisely. Drawing on his background as a former elementary educator, Patrick identifies student misconceptions when they arise in a session and asks targeted questions that guide understanding in the right direction. The strong communication and analytical skills he has exhibited as my teaching assistant would translate well in his role as one of your law clerks.

Patrick is a first-generation college student who lost his mother while he was in college. His ability to transcend his circumstances speaks volumes to his resilience, which will serve him well as a law clerk and as a lawyer. His outstanding analytical skills, excellent writing abilities, strong oral presentation skills, dedicated work ethic, and strong interpersonal skills will be an asset to your chambers, as he has been to my Civil Procedure I students. Please feel free to contact me at 917-589-4461 or jayarn@temple.edu with any questions about Patrick.

Jaya Ramji-Nogales - Jaya.Ramji-Nogales@temple.edu - 215-204-6430

Very Truly Yours,

Jaya Ramji-Nogales
Associate Dean for Research
I. Herman Stern Research Professor

Jaya Ramji-Nogales - Jaya.Ramji-Nogales@temple.edu - 215-204-6430

May 30, 2023

The Honorable Juan Sanchez
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

Dear Judge Sanchez:

I write this letter in support of the clerkship application of Patrick Zancolli. I recommend Mr. Zancolli enthusiastically and without reservation.

I am the faculty chair of the Temple Law Admissions Committee. We actively recruited Mr. Zancolli and awarded him our most prestigious three-year full-tuition scholarship. We were thrilled when he accepted, and we most certainly have not been disappointed. Mr. Zancolli is an extremely talented law student who engages the law with enthusiasm, professionalism, and a keen attention to detail. He is also an excellent and persuasive writer and advocate with first-rate research and analytic skills.

I have been working with Mr. Zancolli since his first year of law school when he applied for our highly prestigious Law & Public Policy (L&PP) Program. This year, we had three times as many applications as we have spots. As a L&PP Scholar, Mr. Zancolli secured an internship with the Tax Division of the U.S. Department of Justice and wrote an excellent policy paper on addressing the "Tax Gap." His paper was so well written and extensively researched that I urged him to submit his paper to the annual meeting of the Law & Society Association (LSA), which is an interdisciplinary and international organization. I was not at all surprised when Mr. Zancolli's paper was selected for the conference, and I am proud to report that he had the opportunity to present his paper at the annual LSA meeting in Lisbon, Portugal on a panel that included law professors and policy makers from around the world.

In short, Mr. Zancolli is an exceptional law student. Please do not hesitate to contact me if there are any questions concerning his qualifications or abilities.

Sincerely,
Nancy J. Knauer

SHELLER PROFESSOR OF PUBLIC INTEREST LAW
DIRECTOR, LAW & PUBLIC POLICY PROGRAM

Nancy Knauer - nancy.knauer@temple.edu - 215-204-1688

PATRICK ZANCOLLI

1126 Buttonwood St, Unit C, Philadelphia, PA 19123 | (267) 424-0510 | patrick.zancolli@temple.edu

WRITING SAMPLE

The attached writing sample is a portion of an opinion written for The Honorable Robert B. Kugler, United States District Judge for the District of New Jersey. It considers Plaintiff's Motion for Remand in an employment case removed by Defendant to federal court and concludes that the Court should dismiss Plaintiff's motion. The writing sample omits the Background section and analysis of Defendant's Motion to Dismiss.

1. Legal Standard

28 U.S.C. § 1441(a) allows a defendant to remove an action filed in state court to a federal court with original jurisdiction over the action. Once an action is removed, a plaintiff may challenge removal by moving to remand the case back to state court. 28 U.S.C. § 1447(c). A case that is removed shall be remanded to state court “[i]f at any time before final judgment it appears that the district court lacks subject matter jurisdiction.” *Id.* To defeat a motion to remand for lack of subject-matter jurisdiction, the defendant bears the burden of showing that the federal court has jurisdiction to hear the case. *Samuel-Bassett v. KIA Motors Am., Inc.*, 357 F.3d 392, 396 (3d Cir. 2004); *Abels v. State Farm Fire & Cas. Co.*, 770 F.2d 26, 29 (3d Cir. 1995) (citing *Pullman Co. v. Jenkins*, 305 U.S. 534, 537 (1939)). Generally, where the decision to remand is a close one, “the removal statute should be strictly construed and all doubts should be resolved in favor of remand.” *Abels*, 770 F.2d at 29 (“[L]ack of jurisdiction would make any decree in the case void and the continuation of the litigation in federal court futile[.]”).

Federal officer subject matter jurisdiction permits a defendant remove a civil action to federal court if the action is against “any officer (or any person acting under that officer) of the United States . . . for or relating to any act under color of such office.” 28 U.S.C. § 1442(a)(1). “Diversity of citizenship subject matter jurisdiction falls within the original jurisdiction of the

district court,’ pursuant to § 1332(a) of Title 28 of the United States Code, and thus ‘a state court case that implicates diversity jurisdiction’ may generally be removed.” *Johnson v. SmithKline Beecham Corp.*, 724 F.3d 337, 346 (3d Cir. 2013) (quoting *Brown v. Francis*, 75 F.3d 860, 865 (3d Cir. 1996)). A district court may properly exercise diversity jurisdiction only if the amount in controversy exceeds \$75,000 and complete diversity of citizenship exists among the adverse parties. *See* 28 U.S.C. § 1332(a).

2. Discussion

Plaintiff contends that this Court lacks proper subject-matter jurisdiction under both federal officer and diversity jurisdiction. Plaintiff states that Defendant is neither a federal officer nor an entity acting under an officer. Plaintiff also asserts that Defendant is a citizen of New Jersey like herself.

Defendant responds that this Court has proper subject-matter jurisdiction under both federal officer and diversity jurisdiction. Defendant states it was acting under the authority of the Department of Defense (“DOD”) when it submitted the report of Plaintiff’s termination pursuant to a federal regulation. Defendant further notes that Plaintiff is a citizen of New Jersey, and it is a citizen of Alaska.

Because this Court has proper subject-matter jurisdiction under both federal officer and diversity jurisdiction, we hold that Plaintiff’s Motion to Remand is denied.

a. Federal Officer Jurisdiction

A defendant may properly remove a state court action under 28 U.S.C. § 1442(a)(1) when four conditions are met. *See Feidt v. Owens Corning Fiberglas Corp.*, 153 F.3d 124, 127 (3d Cir. 1998). First, the defendant must be a “person” within the meaning of the statute. *Id.* Second, the plaintiff’s claims must be based upon the defendant’s conduct “acting under” a federal office. *Id.*

Third, the defendant must raise a colorable federal defense. *Id.* Fourth, there must be a causal nexus between the claims and the conduct performed under color of a federal office. *Id.*

The first three conditions are met here. See *Baran v. ASRC Fed. Mission Sols.* (“*Baran I*”), CV 17-7425 (RMB/JS), 2018 WL 3054677 at *4-6 (D.N.J. June 20, 2018). First, Defendant is a “person” within the meaning of 1442(a)(1) because Defendant is an LLC. *Papp v. Fore-Kast Sales Co.*, 842 F.3d 805, 812 (3d. Cir. 2016). Second, Defendant also “acted under” the Secretary of Defense when it filed the report of plaintiff’s termination according to a federal regulation that was issued by the Secretary pursuant to an Executive Order. *Stephenson v. Nassif*, 160 F. Supp. 3d. 884, 887-89 (E.D. Va. 2015). Third, Defendant has a colorable federal defense because it asserts that the termination report is privileged, and it is not liable for a defamation claim related to a government-imposed duty to report. *Mission1st Group, Inc. v. Filak*, Civil Action No. 09–3758, 2010 WL 4974549, *2 (D.N.J. Dec. 2, 2010); *Becker v. Philco Corp.*, 372 F.2d 771, 775–76 (4th Cir.1967).

The fourth condition, which requires a causal nexus between a plaintiff’s claims and a defendant’s conduct performed under color of federal office, is also met. Plaintiff bases her claims in part on the information Defendant provided in its termination report pursuant to a federal regulation. Defendant was required by the DOD to provide the report and information therein. Plaintiff subsequently made claims that Defendant’s conduct caused her harm. Thus, there is a causal nexus between her claims and Defendant’s conduct.

Plaintiff argues in her Motion to Remand that Defendant may not remove this matter under federal officer jurisdiction because Defendant allegedly included false information in its termination report. However, whether Defendant included false information in the report is not the relevant inquiry. The correct inquiry is whether the four requisite conditions for federal

officer jurisdiction are satisfied. Because they are, this Court finds it has proper federal officer subject matter jurisdiction. Removal on this basis is permitted, and Plaintiff's Motion to Remand should subsequently be denied.

b. Diversity Jurisdiction

While a finding of diversity jurisdiction is not necessary because this Court has federal officer subject matter jurisdiction, we will briefly determine whether diversity jurisdiction exists for the sake of thoroughness. A defendant may properly remove a state court action against them under 28 U.S.C. § 1332(a) when complete diversity of citizenship exists between the parties and the amount in controversy exceeds \$75,000. Here, both requirements are met.

An individual is a citizen of the state where they are domiciled. *Swiger v. Allegheny Energy, Inc.*, 540 F.3d 179, 182 (3d Cir. 2008) (citing *Gilbert v. David*, 235 U.S. 561, 569 (1915)). Plaintiff notes in her complaint that she lives in New Jersey. Therefore, she is a citizen of New Jersey.

Citizenship of a limited liability company is determined by the citizenship of its members. *Zambelli Fireworks Mfg. Co. v. Wood*, 592 F.3d 412, 420 (3d Cir. 2010). When applicable, “the citizenship of unincorporated associations must be traced through however many layers of partners or members there may be’ to determine the citizenship of the LLC.” *Id.* (citing *Hart v. Terminex Int'l*, 336 F.3d 541, 543 (7th Cir. 2003)). Although, as Plaintiff points out, Defendant is based in New Jersey, but the members of Defendant LLC are all citizens of Alaska. Defendant's sole member is a limited liability company whose sole member is a corporation. The corporation is incorporated in Alaska and its principal place of business is in Alaska. Therefore, Defendant is a citizen of Alaska.

The \$75,000 amount in controversy requirement is satisfied by the allegations made in Plaintiff's complaint. In an action removed to federal court, "determining the amount in controversy begins with a reading of the complaint filed in the state court." *Samuel-Bassett v. KIA Motors Am., Inc.*, 357 F.3d 392, 398 (3d Cir. 2004). The court then must analyze the claims made within the complaint to determine whether plaintiff's monetary demands are greater than \$75,000. *Morgan v. Gay*, 472 F.3d 469, 474-75 (3d Cir. 2006). We agree with Defendant that Plaintiff's allegations relating to her termination by Defendant and defamation claims that she more likely than not puts in controversy an amount greater than \$75,000. The amount in controversy requirement is therefore satisfied.

Because complete diversity of citizenship between the parties exists and the amount in controversy in this case exceeds \$75,000, this Court finds it has diversity of citizenship subject matter jurisdiction. Removal on this basis is also permitted, and therefore Plaintiff's Motion to Remand should be denied.

3. Conclusion

For the foregoing reasons, Plaintiff's Motion to Remand is DENIED.

Applicant Details

First Name	Derek
Middle Initial	A
Last Name	Zeigler
Citizenship Status	U. S. Citizen
Email Address	dzeigler@umich.edu
Address	<div> <div>Address</div> <div> <div>Street</div> <div>418 East Washington Street, Apt. #17</div> <div>City</div> <div>Ann Arbor</div> <div>State/Territory</div> <div>Michigan</div> <div>Zip</div> <div>48104</div> <div>Country</div> <div>United States</div> </div> </div>
Contact Phone Number	757-831-5659

Applicant Education

BA/BS From	University of Virginia
Date of BA/BS	May 2018
JD/LLB From	The University of Michigan Law School http://www.law.umich.edu/currentstudents/careerservices
Date of JD/LLB	May 3, 2024
Class Rank	School does not rank
Law Review/Journal	Yes
Journal(s)	Michigan Law Review Michigan Journal of Environmental & Administrative Law
Moot Court Experience	Yes
Moot Court Name(s)	Campbell Moot Court Competition

Bar Admission

Prior Judicial Experience

Judicial Internships/
Externships **No**
Post-graduate Judicial
Law Clerk **No**

Specialized Work Experience

Recommenders

Russ, John
John.Russ@usdoj.gov
2025323902

Katz, Ellen
ekatz@umich.edu
734-647-6241

Steinberg, Michael J.
mjsteinb@umich.edu

**This applicant has certified that all data entered in this profile and
any application documents are true and correct.**

Derek A. Zeigler

418 East Washington Street Apt. #17, Ann Arbor, MI 48104
(757) 831-5659 | dzeigler@umich.edu

June 12, 2023

The Honorable Juan R. Sánchez
U.S. District Court for the Eastern District of Pennsylvania
James A. Byrne U.S. Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

Dear Judge Sánchez:

I am a rising third-year student at the University of Michigan Law School and am also pursuing a dual Master of Public Policy degree from the Gerald R. Ford School of Public Policy. I am writing to apply for a clerkship in your chambers for the 2024–2025 term.

Prior to law school, I worked in a highly collaborative environment as a Paralegal Specialist for two years at the United States Department of Justice Antitrust Division, which enhanced my writing and research abilities by preparing draft complaints and writing legal recommendation memoranda. These skills have served me well in law school, where I received honors in my legal writing and practice courses, represented clients in the Civil Rights Litigation Initiative, and was chosen as an Executive Editor for the Michigan Law Review.

I am dedicated to a career in civil rights law, particularly in ensuring that everyone has the freedom and opportunity to vote. I have pursued this interest as an intern throughout all of my law school summers. Whether writing determinations for campaign finance regulations or crafting memoranda for a statewide racial gerrymandering investigation, I approached these tasks with attention to detail, an emphasis on organization, and a commitment to justice. I would approach a clerkship in your chambers with the same diligence and passion.

I have attached my resume, law school transcript, undergraduate transcript, and a writing sample for your review. Letters of recommendation from the following professors are also attached:

- Professor Ellen Katz: ekatz@umich.edu, (734) 647-6241
- Professor Michael Steinberg: mjstein@umich.edu, (734) 615-2407
- Deputy Chief John (Bert) Russ, U.S. Department of Justice Civil Rights Division, Voting Section: john.russ@usdoj.gov, (202) 532-3902

Thank you for your time and consideration.

Respectfully,

Derek A. Zeigler

Derek A. Zeigler

418 East Washington Street Apt. #17, Ann Arbor, MI 48104
(757) 831-5659 | dzeigler@umich.edu

EDUCATION

UNIVERSITY OF MICHIGAN LAW SCHOOL Ann Arbor, MI
Expected May 2024

Juris Doctor GPA: 3.764
Journals: Michigan Law Review, *Executive Editor* (Vol. 122)
Michigan Journal of Environmental & Administrative Law, *Junior (1L) Editor* (Vol. 10.2)
Publication: Derek A. Zeigler & José Urteaga, Note, *Is There Anything Left in the Fight Against Partisan Gerrymandering? Congressional Redistricting Commissions and the "Independent State Legislature Theory,"* 122 Mich. L. Rev. (forthcoming Dec. 2023).
Activities: Campbell Moot Court Competition, Quarterfinalist
Research Assistant for Professor Leah Litman (researching voting rights and restrictions)
MI Voting Project, Treasurer
Street Law, Site Leader
American Constitution Society, 2L Representative

UNIVERSITY OF MICHIGAN GERALD R. FORD SCHOOL OF PUBLIC POLICY Ann Arbor, MI
Expected May 2024

Master of Public Policy, GPA: 4.00
Honors: Phi Kappa Phi
Activities: Michigan Journal of Public Affairs, *Associate Editor* (Vol. 18)
Research Assistant for Professor Barry Rabe (researching international environmental policy)

UNIVERSITY OF VIRGINIA FRANK BATTEN SCHOOL OF LEADERSHIP & PUBLIC POLICY Charlottesville, VA
May 2018
Bachelors of Arts, Leadership & Public Policy; Political Philosophy, Policy & Law, GPA: 3.89
Honors: Highest Distinction; Phi Beta Kappa; Omicron Delta Kappa; Pi Alpha Alpha
Activities: *Virginia Undergraduate Law Review*; *Wilson Journal of International Affairs*; Phi Alpha Delta Law Fraternity

EXPERIENCE

THE BRENNAN CENTER FOR JUSTICE, DEMOCRACY PROGRAM New York, NY
June 2023 – Present

CIVIL RIGHTS LITIGATION INITIATIVE Ann Arbor, MI
January 2023 – Present

- Conduct factual and legal investigations on cases pertaining to consumer rights and disability rights.
- Craft memoranda to develop legal theories and litigation strategy; press releases to publicize cases in the media and to the public; and demand letters to advocate for relief to vindicate clients' civil rights.

UNITED STATES DEPARTMENT OF JUSTICE CIVIL RIGHTS DIVISION, VOTING SECTION Washington, D.C.
May 2022 – August 2022

- Drafted legal research memoranda and motions for statewide redistricting and vote dilution matters, conducted pre-deposition research, and assisted in research for a U.S. Supreme Court amicus curiae brief.
- Provided edits for a draft presidential proclamation for National Voter Registration Day.
- Monitored federal elections in jurisdictions covered under Section 203 of the Voting Rights Act.

MICHIGAN DEPARTMENT OF STATE – BUREAU OF ELECTIONS Lansing, MI
May 2021 – August 2021

- Investigated campaign finance complaints and wrote, edited, and issued determinations against political candidates and committees for violations of the Michigan Campaign Finance Act (MCFA).
- Analyzed states' election laws and recommended rule changes for efficient elections for Michiganders.

UNITED STATES DEPARTMENT OF JUSTICE ANTITRUST DIVISION Washington, D.C.
August 2018 – July 2020

Paralegal Specialist
• Drafted recommendations and memos, edited briefs, and wrote complaints and other court documents.
• Managed teams of paralegals by leading meetings, delegating tasks, and overseeing others' work.
• Interviewed market participants, reviewed documents to compile evidentiary records, analyzed data relating to market shares, and researched various regulatory guidelines at the state and local level.

INTERESTS

Marvel Cinematic Universe fan, gaming (board- and video-games), trying new recipes, exploring new places

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Issue Date: 05/30/2023

Page 1

The University of Michigan Law School

Cumulative Grade Report and Academic Record

Name: Zeigler, Derek Anthony

Student#: 56944081



Paul R. Larson
University Registrar

Subject	Course Number	Section Number	Course Title	Instructor	Load Hours	Graded Hours	Towards Program	Credit Grade
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Fall 2020 (August 31, 2020 To December 14, 2020)

LAW	510	003	Civil Procedure	Len Niehoff	4.00	4.00	4.00	B+
LAW	520	003	Contracts	Kristina Daugirdas	4.00	4.00	4.00	B+
LAW	580	003	Torts	Sherman Clark	4.00	4.00	4.00	A
LAW	593	009	Legal Practice Skills I	Howard Bromberg	2.00		2.00	H
LAW	598	009	Legal Pract:Writing & Analysis	Howard Bromberg	1.00		1.00	H

Term Total GPA: 3.533

Cumulative Total GPA: 3.533

Winter 2021 (January 19, 2021 To May 06, 2021)

LAW	530	003	Criminal Law	JJ Prescott	4.00	4.00	4.00	A-
LAW	540	002	Introduction to Constitutional Law	Leah Litman	4.00	4.00	4.00	A-
LAW	594	009	Legal Practice Skills II	Howard Bromberg	2.00		2.00	H
LAW	682	001	Int'l Environment Law & Policy	Kristina Daugirdas	3.00	3.00	3.00	A

Term Total GPA: 3.781

Cumulative Total GPA: 3.652

Fall 2021 (August 30, 2021 To December 17, 2021)

PUBPOL	555		Micro for PubPol	Internal transfer course	3.00		3.00	A+
PUBPOL	563		Environmental Policy	Internal transfer course	3.00		3.00	A

Term Total GPA: 3.652

Cumulative Total GPA: 3.652

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Issue Date: 05/30/2023

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The University of Michigan Law School

Cumulative Grade Report and Academic Record

Name: Zeigler, Derek Anthony
Student#: 56944081



Paul R. Larson
University Registrar

Subject	Course Number	Section Number	Course Title	Instructor	Load Hours	Graded Hours	Credit Towards Program	Grade
Winter 2022 (January 12, 2022 To May 05, 2022)								
PUBPOL	587		Public Management	Internal transfer course	1.50	1.50		A
PUBPOL	639		Quant Prgm Eval	Internal transfer course	3.00	3.00		A
PUBPOL	750		Special Topics	Internal transfer course	1.50	1.50		A
Term Total					6.00	6.00		
Cumulative Total					GPA: 3.652	23.00	40.00	
Fall 2022 (August 29, 2022 To December 16, 2022)								
LAW	495	001	UReforming Redistricting/ MICRC	Ellen Katz	2.00	2.00	2.00	A
LAW	669	002	Evidence	David Moran	3.00	3.00	3.00	B+
LAW	793	001	Voting Rights / Election Law	Ellen Katz	4.00	4.00	4.00	A
LAW	807	001	Civil Rights Litigation	Michael Steinberg	3.00	3.00	3.00	A
Term Total					GPA: 3.825	12.00	12.00	
Cumulative Total					GPA: 3.711	35.00	52.00	
Winter 2023 (January 11, 2023 To May 04, 2023)								
LAW	601	001	Administrative Law	Nina Mendelson	4.00	4.00	4.00	A-
LAW	730	001	Appellate Advoc:Skills & Pract	Evan Caminker	4.00	4.00	4.00	A
LAW	901	001	Civil Rights Litg Initiative	Michael Steinberg	5.00	5.00	5.00	A
Term Total					GPA: 3.907	13.00	13.00	
Cumulative Total					GPA: 3.764	48.00	65.00	

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The University of Michigan Law School

Cumulative Grade Report and Academic Record

Name: Zeigler, Derek Anthony
Student#: 56944081



Paul R. Larson
University Registrar

Course		Section	Load		Graded	Towards	
Subject	Number	Number	Course Title	Instructor	Hours	Hours	Program Grade
Fall 2023 (August 28, 2023 To December 15, 2023)							
Elections as of: 05/30/2023							
LAW	536	001	Nat'l Security & Civ Liberties	Barbara Mcquade	3.00		
LAW	677	001	Federal Courts	Gil Seinfeld	4.00		
LAW	679	001	Environmental Law and Policy	Nina Mendelson	4.00		
LAW	685	001	Design Fulfilling Life in Law	Bridgette Carr	2.00		
				Vivek Sankaran			

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University of Michigan Law School Grading System

Honor Points or Definitions

Through Winter Term 1993	Beginning Summer Term 1993
A+ 4.5	A+ 4.3
A 4.0	A 4.0
B+ 3.5	A- 3.7
B 3.0	B+ 3.3
C+ 2.5	B 3.0
C 2.0	B- 2.7
D+ 1.5	C+ 2.3
D 1.0	C 2.0
E 0	C- 1.7
	D+ 1.3
	D 1.0
	E 0

Other Grades:

- F Fail.
- H Top 15% of students in the Legal Practice courses for students who matriculated from Spring/Summer 1996 through Fall 2003. Top 20% of students in the Legal Practice courses for students who matriculated in Spring/Summer 2004 and thereafter. For students who matriculated from Spring/Summer 2005 through Fall 2015, "H" is not an option for LAW 592 Legal Practice Skills.
- I Incomplete.
- P Pass when student has elected the limited grade option.*
- PS Pass.
- S Pass when course is required to be graded on a limited grade basis or, beginning Summer 1993, when a student chooses to take a non-law course on a limited grade basis.* For SJD students who matriculated in Fall 2016 and thereafter, "S" represents satisfactory progress in the SJD program. (Grades not assigned for LAW 970 SJD Research prior to Fall 2016.)
- T Mandatory pass when student is transferring to U of M Law School.
- W Withdrew from course.
- Y Final grade has not been assigned.
- * A student who earns a grade equivalent to C or better is given a P or S, except that in clinical courses beginning in the Fall Term 1993 a student must earn a grade equivalent to a C+ or better to be given the S.

MACL Program: HP (High Pass), PS (Pass), LP (Low Pass), F (Fail)

Non-Law Courses: Grades for these courses are not factored into the grade point average of law students. Most programs have customary grades such as A, A-, B+, etc. The School of Business Administration, however, uses the following guides: EX (Excellent), GD (Good), PS (Pass), LP (Low Pass) and F (Fail).

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U.S. Department of Justice
Civil Rights Division

*Voting Section
950 Pennsylvania Ave., NW
4CON 8th floor
Washington, D.C. 20530*

May 25, 2023

Re: Letter of Recommendation for Derek Zeigler

Dear Judge:

I write to recommend Derek Zeigler for a judicial clerkship with your chambers.

During the Summer 2022 semester, Derek worked full-time as a law student intern with our office, the Voting Section of the U.S. Department of Justice, Civil Rights Division. Derek is graduating from the University of Michigan Law School next year. He is also pursuing a Master of Public Policy degree at Michigan. I am the Deputy Chief who hired Derek and, with one of my colleagues, supervised him during the internship. Derek worked with our office from May 31 to August 5, 2022.

When we hired Derek, we knew that he had great prior work experience. He was a paralegal for two years in the Antitrust Division at the U.S. Department of Justice—something that made him stand out among our other applicants. As a law student, he also interned with the Michigan Secretary of State's Office on election law issues. Since then, he has shown his continued commitment to civil rights work through his participation in the Civil Rights Litigation Initiative in Ann Arbor and with his forthcoming internship with the Brennan Center.

During his time with us, Derek was simply outstanding. We assigned him to a state-wide lawsuit involving the Voting Rights Act, where he worked hard as part of a team. Derek was prolific, completing about 25 different assignments during his relatively short time with us, on several different cases and investigations. He conducted factual and legal research on multiple briefs and motions, he helped attorneys prepare for their depositions, he cite-checked legal documents, and he even conducted document review. Many times, he faced tight deadlines, finishing projects with only a day or two's notice.

His colleagues, both on the statewide lawsuit and other matters, uniformly praised his performance. One attorney said that Derek "produced a fantastic memo—both in substance and in execution. His writing is clear and easy to follow, and his conclusions were creative and helpful to us." For another project, an attorney found Derek had a "great attitude" and was "very responsive and realistic about timing." Derek also did election monitoring in the field with colleagues, and he was "professional but personable" and "attentive to details."

- 2 -

In a large class of talented summer interns, Derek distinguished himself as exemplary. He has shown a commitment to public service and would make a great asset to your chambers. Importantly, he was a good colleague: he worked well with others, and we could count on him.

Many years ago, I had the honor to serve as a law clerk for a District Court judge in the Central District of California and later for a circuit court judge on the D.C. Circuit. I think about the additional experiences that Derek has had, particularly as a paralegal, compared to my own experiences at that time. Derek's work background distinguishes him from many other applicants and will make him truly shine in a clerkship position. I recommend him unreservedly.

If you have any questions, please do not hesitate to contact me at john.russ@usdoj.gov or (202) 532-3902.

Sincerely,

A handwritten signature in cursive script that reads "John Albert Russ IV".

John Albert Russ IV (Bert)
Deputy Chief & Elections Coordinator
Voting Section, Civil Rights Division
U.S. Department of Justice

UNIVERSITY OF MICHIGAN LAW SCHOOL
625 South State Street
Ann Arbor, Michigan 48109-1215

Ellen D. Katz
Ralph W. Aigler Professor of Law

June 10, 2023

The Honorable Juan Sanchez
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

Dear Judge Sanchez:

Derek Zeigler, an applicant for a clerkship in your chambers, has asked me to write a letter of recommendation on his behalf. I am pleased to do so.

Derek was my student last fall in two classes. One was a course that focused on federal election law and the other was a seminar in which we examined the recently completed work of the Michigan Independent Citizens Redistricting Commission (MICRC). Derek did fine work in both classes. He was not a frequent participant in class discussions in either class, but when he joined the discussion, he contributed productively to the conversation, often expanding on or otherwise developing themes under review. While I wish I had heard more from Derek in class, the comments he offered were solid, and showed good preparation and consideration of the material. In the election law class, his final exam was well written and argued and demonstrated his mastery of the material.

For his seminar paper, Derek was interested in exploring the implications of the developing Independent State Legislature (ISL) doctrine as applied to redistricting commissions. As we read and had discussed in class, Arizona's redistricting commission had previously withstood an ISL challenge, but a variety of developments have suggested that commissions remain vulnerable under the ISL doctrine. Derek and a classmate set out to document which existing commissions were most vulnerable to challenge and which might survive scrutiny in light of the various ways ISL doctrine might develop. The project examined the level of legislative involvement in the creation and operation of the commissions presently operating in a number of States. Under most accounts, near total insulation from legislative interference has emerged as a key component for commission success. Derek and his-co-author concluded that such commissions—that is, the ones with the least legislative involvement—are the ones most vulnerable to invalidation under a more robust ISL doctrine. That conclusion, while not itself surprising, is cleanly and effectively presented in the paper, which offers a novel and useful typology, which the authors call the “spectrum model,” for parsing differences among commissions and for creating and reforming existing ones. The paper's message is admittedly disheartening, as the commissions that seem more effectively structured to minimize partisan manipulation are also the ones most vulnerable to invalidation. The analysis is nevertheless clear, pragmatic and constructive.

In my conversations with Derek in and out of the classroom, I know him to be friendly and engaging. His excitement about the study and practice of law and his easy-going manner suggest he will be a terrific law clerk and an enjoyable presence in chambers.

Sincerely,

Ellen D. Katz

Ellen Katz - ekatz@umich.edu - 734-647-6241

June 05, 2023

The Honorable Juan Sanchez
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

Dear Judge Sanchez:

It is a pleasure to write this recommendation in support of Derek Zeigler's application for a judicial clerkship. Before joining the University of Michigan Law School faculty full-time four years ago, I served as the legal director of the American Civil Liberties Union of Michigan for 22 years. I have had students and legal interns go on to prestigious federal clerkships across the country, including in at least eight federal circuit courts of appeals, at least thirty federal district courts, and the U.S. Supreme Court. Based on his outstanding performance in my civil rights clinic as well as in my civil rights litigation class, I am certain that Mr. Zeigler will be an outstanding law clerk. In addition to being exceptionally bright, his writing and analytic skills are top notch, he has a strong work ethic, and his judgment and commitment to advancing the public interest are second to none.

I first had the opportunity to know Mr. Zeigler when he enrolled in my 16-student civil rights litigation class this past fall. It was a demanding class in which students not only learned the basics of Section 1983 but also put it to use as they "litigated" a simulated actual case I litigated challenging a DNA dragnet targeting all Black men in Ann Arbor. As part of the class, Mr. Zeigler interviewed "clients"; prepared a FOIA request and demand letter; wrote a complaint; drafted a brief in opposition to a motion to dismiss; orally argued two motions; took a deposition of a police officer; and engaged in negotiations to settle the case.

As his high GPA reflects, Mr. Zeigler is a great student. His brief in response to the motion to dismiss was noteworthy for being particularly well organized, well researched, well written, and persuasive. He demonstrated a skill for explaining difficult equal protection doctrine in an easy-to-understand manner. He is a very strong oral advocate, and he proved to be a very confident and effective negotiator. He was consistently prepared for and engaged in class, and his contributions to the discussions were insightful.

Mr. Zeigler's performance in my civil rights course was so impressive that I admitted him this past semester into the clinic I founded at Michigan Law, the Civil Rights Litigation Initiative. I assigned him to two important cases because I trusted him to provide excellent representation. He exceeded my expectations.

First, he represented a former justice of the Michigan Supreme Court in an extremely complicated, cutting-edge consumer rights case, which may be filed as a class action. He wrote a comprehensive memo assessing the likelihood of prevailing on the merits of numerous provisions of the Fair Debt Collections Act, and addressed various strategy and procedural issues including standing. We are consulting with national experts in the field and they were very impressed by Mr. Zeigler's writing and thoroughness.

The second case Mr. Zeigler worked on was a public accommodations/disability rights case on behalf of a man who uses a wheelchair in his effort to have a popular local restaurant comply with the Americans with Disabilities Act. He and his clinic partner developed an excellent relationship with our client, consulted with an accessibility expert, drafted a comprehensive memo evaluating the merits of a potential lawsuit, wrote a persuasive demand letter and negotiated with opposing counsel. Our client, who is a wonderful person, is thrilled with Mr. Zeigler's representation.

In addition to being an excellent scholar and litigator, Mr. Zeigler is involved in the Michigan Law community. He is an Executive Editor of the Michigan Law Review, and is active with the American Constitution Society, the Michigan Voting Project, the street law program, and other organizations. This level of activity is extremely impressive, especially for a dual degree student.

Further, Mr. Zeigler is gaining invaluable experience through his summer work. This summer he is interning with the Brennan Center's Democracy Program, one of the leading voting rights advocacy organizations in the country. And last summer he worked as a legal and policy intern with the Voting Section of the DOJ's Civil Rights Division.

Having served as a judicial law clerk myself, I am well aware of the importance of hiring the right clerks. I am certain that Mr. Zeigler would be a great hire. He listens to and follows instructions extremely well and takes pride in his work. He is also able to work quickly and accurately under time pressure, and you can trust his research.

Moreover, Mr. Zeigler is a wonderful person. His positive attitude, strong work ethic, sense of humor, and passion for justice have made him a joy to have in class and clinic. He is a team player who is liked and respected by all who work with him. I am very much looking forward to working with him next semester as an advanced clinical student.

In short, I highly recommend Mr. Zeigler for a clerkship in your chambers without any reservations. If you would like to discuss his qualifications further, please feel free to contact me.

Very truly yours,

Michael J. Steinberg
Professor from Practice and Director of the

Michael J. Steinberg - mjsteinb@umich.edu

Civil Rights Litigation Initiative
University of Michigan Law School

Michael J. Steinberg - mjsteinb@umich.edu

Derek A. Zeigler

418 East Washington Street Apt. #17, Ann Arbor, MI 48104
(757) 831-5659 | dzeigler@umich.edu

Writing Sample

I prepared this writing sample as a contestant in the University of Michigan Law School's Campbell Moot Court Competition. I have provided the Statement of Facts and my analysis in Part I of the Argument section, both of which I wrote alone, but have excluded Part II of the Argument section pertaining the public rights doctrine, which my partner in the competition wrote. This sample is self-edited.

STATEMENT OF THE CASE

Introduction

Respondent Consumer Financial Protection Bureau (“CFPB”) brought adjudicative action against Petitioner H.B. Sutherland Bank, N.A. (“Sutherland”) for violating various consumer financial protection statutes. The CFPB did not grant a civil jury at any part of the process to Sutherland, in violation of its right to a civil jury trial under the Seventh Amendment. Further, CFPB’s sole administrative law judge (“ALJ”) who oversaw the proceeding was improperly acting in his capacity as an inferior officer within a multi-layered for-cause removal protection scheme.

The statutory disputes are not at issue before this Court. Petitioner instead asks the Court to overrule an *en banc* decision of the Twelfth Circuit that found the CFPB’s adjudicative process did not violate Sutherland’s Seventh Amendment rights, and that the dual-layer for-cause removal protections afforded to the CFPB’s ALJ do not violate the constitutional separations of powers.

The Twelfth Circuit’s *en banc* decision improperly held that the rights implicated in this case were public, not private, and therefore did not adequately examine whether the immediate cause of action existed at common law at the time of the Seventh Amendment’s adoption, which would have provided Sutherland with a civil jury trial. Further, the Twelfth Circuit erroneously applied this Court’s recent precedent on presidential appointment and removal power. The Majority misinterpreted and misapplied this Court’s precedent that, if applied correctly, provides that the dual-layer for-cause removal structure protecting the ALJ in this case unconstitutionally contravenes the President’s ability to take care to faithfully execute the laws of the United States.

I. Statement of Facts

Sutherland provides retail banking, insurance, and wealth management services to millions of customers nationwide, including over 1 million individuals in Hutchins. The CFPB administers

and enforces eighteen federal consumer financial protection statutes. The CFPB's mandate therefore includes overseeing Sutherland's banking practices.

On July 6, 2019, the CFPB brought an adjudicative proceeding against Sutherland for violations of three statutes: the Electronic Fund Transfer Act, 15 U.S.C. §§ 1693-1693r, the Fair Credit Reporting Act, 15 U.S.C. § 1681(f), and the Consumer Financial Protection Act (CFPA), 12 U.S.C. §§ 5531, 5536. As part of the CFPA claims, the CFPB also alleged Sutherland "engaged in deceptive acts and practices both in person and over the phone," violating its new prohibition on "unfair, deceptive, or abusive acts and practices" (UDAAP). 12 U.S.C. § 5536(a)(1)(B); *H.B. Sutherland Bank, N.A. v. Consumer Fin. Prot. Bureau*, 505 F.4th 1, 3-4 (12th Cir. 2022).

The CFPB's sole administrative law judge (ALJ) initiated, adjudicated, and resolved the proceeding against Sutherland. After a substantive investigation, the ALJ held Sutherland violated each Act as well as engaged in unfair, deceptive, or abusive acts and practices by *knowingly* making false statements and misrepresentations to its customers about fees associated with their bank accounts even years after customers began complaining about the fees. The ALJ assessed over \$8 million in monetary damages against Sutherland and ordered an injunction against Sutherland from offering its APP services.

Sutherland appealed the ALJ's order to Ms. Thandiwe Pierson, CFPB's Director. Director Pierson upheld each of the ALJ's findings and its issued penalties. She later rejected Sutherland's motion to stay her order at which point Sutherland brought the case to federal court.

The ALJ operates under the structure created by the Administrative Procedure Act and related statutory provisions. *See* 12 U.S.C. § 5563(a); 5 U.S.C. §§ 500-596. The ALJ was duly appointed under 5 U.S.C. § 3105. The ALJ is only removable for good cause "established and

determined by the Merit Systems Protection Board” (MSPB), which itself is an independent multimember federal agency. 5 U.S.C. § 7521(a). The MSPB can only remove the ALJ via good cause if it first determines such a violation “on the record and after opportunity for a hearing before the Board.” 5 C.F.R. § 930.211 (2022). The President cannot directly remove the CFPB’s ALJ for any reason. The President can remove MSPB members, but only for “inefficiency, neglect of duty, or malfeasance in office.” 5 U.S.C. § 1202(d). The CFPB’s Director has no direct control over the MSPB’s assessment of “good cause” for the agency’s ALJ and cannot herself directly remove the ALJ for any reason. She *can*, but does not always and often does not, review the ALJ’s decisions. If the Director does not review the ALJ’s decision, it is final and represents the official policy of the CFPB. Following this Court’s decision in *Seila Law v. Consumer Financial Protection Bureau*, the President can remove the CFPB Director at will. 140 S. Ct. 2183, 2204 (2020).

II. Procedural History

On July 6, 2019, the CFPB initiated administrative proceedings against Sutherland, seeking civil money damages, restitution, and injunctive relief for violations of various acts under the CFPB’s jurisdiction. The CFPB’s ALJ found Sutherland liable on all counts, assessed over \$8 million in damages to Sutherland, and recommended enjoining Sutherland from its violative practices. Sutherland appealed the ALJ’s decision to the CFPB Director who summarily upheld the ALJ decision and rejected Sutherland’s constitutional claims. After the Director denied Sutherland’s Motion to Stay her final order, Sutherland appealed to the Twelfth Circuit, which also rejected Sutherland’s constitutional arguments. In late 2021, Sutherland petitioned the Twelfth Circuit to rehear the case *en banc*. After oral argument, the Twelfth Circuit upheld the Circuit panel’s decision. Having exhausted all other options, Sutherland filed a petition for writ of certiorari with the Supreme Court of the United States, which the Court granted.

ARGUMENT

I. The Dual-Layer For-Cause Removal Protection Afforded To The Consumer Financial Protection Bureau’s Administrative Law Judge Violates The President’s Removal Powers Under The Take Care Clause Of The U.S. Constitution.

The Constitution requires the President to “take Care that the Laws be faithfully executed.” U.S. Const. art. II, § 3, cl. 4. In *Myers v. United States*, this Court found that inherent within this Article II power resides the President’s “general administrative control of those executing the laws, including the power of appointment and removal of executive officers.” 272 U.S. 56, 164 (1926). The Court has since upheld this general principle, with few exceptions. *Free Enter. Fund v. Pub. Co. Acct. Oversight Bd.*, 561 U.S. 477, 498 (2010) (holding unconstitutional a law insulating the SEC’s Public Company Accounting Oversight Board behind *dual-layered removal protections*); *Seila Law LLC v. Consumer Fin. Prot. Bureau*, 140 S. Ct. 2183, 2204 (2020) (finding the President’s inability to remove the CFPB Director at will was unconstitutional); *Collins v. Yellen*, 141 S. Ct. 1761, 1784 (2021) (finding a for-cause restriction on the President’s removal authority over the FHFA Director as unconstitutional). The present case asks this Court to address one of the two remaining exceptions: whether the dual-layer for-cause removal structure for *inferior* officers—specifically ALJs—is of such a nature that it “impede[s] the President’s ability to perform his constitutional duty,” and violates the “President’s unrestricted removal power.” *Seila Law*, 140 S. Ct. at 2198–99. For the following reasons, the Court should answer in the affirmative.

A. The CFPB’s ALJ possesses significant executive powers that surpass the sole adjudicative power held by other inferior officers.

Administrative law judges are inferior officers of the United States. *Lucia v. Sec. & Exch. Comm’n*, 138 S. Ct. 2044, 2049 (2018). When determining the constitutionality of presidential removal limitations over inferior officers, the Court considers a variety of factors that may “impede the President’s ability to perform his constitutional duty.” *Morrison v. Olson*, 487 U.S. 654, 691

(1988). This test focuses on the amount and type of power wielded by the inferior officer. *Id.* An officer may possess purely quasi-legislative or quasi-judicial power. *Compare Humphrey's Ex'r v. United States*, 295 U.S. 602, 624 (1936) (noting that the quasi-legislative or -judicial power of an officer most likely renders a removal protection constitutional), *with Seila Law*, 140 S. Ct. at 2199 (noting the “quasi-legislative and quasi-judicial power” analysis is not fully sufficient to demonstrate a constitutional removal limitation). Or, an officer may possess significant administrative, enforcement, executive, or policymaking authority, making removal restrictions substantially more suspect. *Seila Law*, 140 S. Ct. at 2200–01. In its assessment, this Court must assess the agency’s scope within which the ALJ wields this power, including the number of acts the agency enforces, its power over industry and economy, and its available enforcement actions. *Seila Law*, 140 S. Ct. at 2193; *Collins*, 141 S. Ct. at 1771–72. The Court must also examine the type of removal restriction itself, and have viewed multi-layered removal protections over other types of inferior officers as unconstitutional. *Free Enter. Fund*, 561 U.S. at 483–84.

Petitioner does not ask the Court to reconsider *Lucia*. Both parties and the Twelfth Circuit agree ALJs are inferior officers. *H.B. Sutherland Bank, N.A. v. Consumer Fin. Prot. Bureau*, 505 F.4th 1, 15 (12th Cir. 2022). However, contrary to the Twelfth Circuit’s *en banc* holding, *id.* at 16–18, and the dicta in *Free Enterprise Fund*, 561 U.S. at 507 n.10, the CFPB’s ALJ, as an inferior officer, wields substantial executive power—not merely adjudicative power—such that the dual-layer for-cause removal structure protecting the ALJ violates the separation of powers.

1. The CFPB’s agency powers and scope make the ALJ’s dual-layer for-cause removal structure inherently suspect.

Part of this inquiry—the *agency’s* powers and scope—this Court already addressed in *Seila Law*. In that case, the Court found the CFPB had substantive executive authority, including

The authority to conduct investigations, issue subpoenas and civil investigative demands; initiate administrative adjudications, and prosecute civil actions in federal court. To remedy violations of federal consumer financial law, the CFPB may seek restitution, disgorgement, and injunctive relief, as well as civil penalties of up to \$1,000,000 (inflation adjusted) for each day that a violation occurs.

Seila Law, 140 S. Ct. at 2193 (citations omitted). Today, the CFPB is again at issue, making these agency assessments directly applicable. While *Seila Law* assessed the unconstitutionality of these powers in relation to the CFPB’s unitary, irremovable Director, “[m]any of these decisions rest in the hands” of the CFPB’s sole ALJ, *Sutherland Bank*, 505 F.4th at 37 (Bernhard, S.J., dissenting), throwing into doubt the constitutionality of the dual-layer removal protections for the ALJ itself.

2. The ALJ possesses executive, policymaking powers, not just adjudicative control over judicial proceedings.

The CFPB ALJ’s powers are not simply adjudicative, but are instead executive and cross “into the realm of policy,” frequently resulting in the ALJ “serving some executive functions.” *Sutherland Bank*, 505 F.4th at 38 (Bernhard, S.J., dissenting) (referencing Charles H. Koch, Jr., *Policymaking by the Administrative Judiciary*, 56 Ala. L. Rev. 693, 694 (2005) (“Administrative agencies usually have considerable policymaking functions and hence administrative adjudicators operate in policy-rich environments. The agency’s substantial policymaking role serves to complicate the adjudicator’s policy function.”)). In this case alone, the ALJ conducted an intrusive investigation into Sutherland’s practices, found violations of three different federal statutes, assessed damages to Sutherland worth over \$8 million for these violations, and sought injunctive relief against Petitioner. *Id.* 505 F.4th at 3-6 (majority opinion). Had the Director chosen not to review the ALJ’s decision—a common occurrence due to resource restraints—the decision would then have “become[] the decision of the agency.” 5 U.S.C. § 557(b). In such a case, the ALJ itself would create the policy of the CFPB, without any direct presidential oversight under the threat of removal, *see Lucia*, 138 S. Ct. at 2053-55, something far outside the gambit of simply quasi-

legislative or quasi-judicial power. *Humphrey's Ex'r*, 295 U.S. at 624. Granting such executive control without executive oversight through at will removal power “subverts the President’s ability to ensure that the laws are faithfully executed” and is plainly “incompatible with the Constitution’s separation of powers.” *Free Enter. Fund*, 561 U.S. at 498.

Relying on dicta from *Free Enterprise Fund*, 561 U.S. at 507 n.10, the Twelfth Circuit Majority notes that the ALJ solely “performs adjudicative—not policymaking—functions,” *Sutherland Bank*, 504 F.4th at 16, “but the same [charge] could be said for all officers of the Government, with the single exception of the President.” *Morrison*, 487 U.S. at 717 (Scalia, J., dissenting). This Court’s recent decision in *Seila Law* demonstrates that officers, like the ALJ here, can possess an array of powers, including both executive *and* adjudicative, that call into question the constitutionality of their removal protections. *Seila Law*, 140 S. Ct. at 2193-94; *see also Free Enter. Fund*, 561 U.S. at 536 (Breyer, J., dissenting) (“The Court suggests, for example, that its rule may not apply where an inferior officer performs adjudicative functions, *but the Accounting Board performs adjudicative functions.*” (emphasis added) (cleaned up)).

Further, the Majority not only incorrectly applies dicta of this Court in *Free Enterprise Fund* to uphold the dual-layer for-cause removal protections at issue, but it also fundamentally changes this Court’s language to achieve its result. The Majority notes that *all* ALJs, including the CFPB ALJ, “*exclusively* perform ‘adjudicative rather than enforcement or policymaking functions’ and as here, functionally ‘possess *purely* recommendatory powers.’” *Sutherland Bank*, 504 F.4th at 17 (quoting *Free Enter. Fund*, 561 U.S. at 507 n.10)) (emphasis added); *but see Free Enter. Fund*, 561 U.S. at 507 n.10 (“[U]nlike members of the Board, *many* administrative law judges of course perform adjudicative rather than enforcement or policymaking functions, *or* possess purely recommendatory powers.” (emphasis added)). Contrary to the Majority’s holding, this Court’s

language clearly does not apply to *all* ALJs, specifically those, such as here, where the ALJ partially wields executive power. *Sutherland Bank*, 504 F.4th at 38 (Bernhard, S.J., dissenting). But more, the Majority also ignores the fact that this Court excluded ALJs from its holding in *Free Enterprise Fund* at least in part because it had not yet determined “[w]hether administrative law judges are [] ‘Officers of the United States,’” 561 U.S. at 507 n.10, which this Court has now addressed in *Lucia* in the affirmative, 138 S. Ct. at 2049, and which all parties acknowledge here. *Sutherland*, 505 F.4th at 15. Only through misapplying this Court’s precedents can the Majority hold the ALJ’s dual-layer for-cause removal protections are constitutional because “the ALJ does *not* wield substantial executive authority.” *Sutherland Bank*, 504 F.4th at 17; *see also Lucia*, 138 S. Ct. at 2055-56 (Breyer, J., dissenting) (noting a concern that *Lucia*’s holding directly threatens the dual-layer for-cause removal protections over ALJs throughout the federal bureaucracy when read in conjunction with the holding in *Free Enterprise Fund*).

3. The ALJ’s dual-layer for-cause removal structure is inherently suspect based on *Free Enterprise Fund*.

Lastly, the Court must examine the type of removal protection apparent in the case at hand. Almost all of the Court’s jurisprudence addresses *single*-layer for-cause removal structures, regardless of if the officer in question is a single director or one member of a multimember body. *See, e.g., Humphrey’s Ex’r*, 295 U.S. at 621–22; *Morrison*, 487 U.S. at 664; *Seila Law*, 140 S. Ct. at 2200. *Free Enterprise Fund* marks the only case where the Court addressed a multi-layer for-cause removal protection structure like the one at issue in this case. *Free Enter. Fund*, 561 U.S. at 495. In striking down the dual-layer removal protection for the PCAOB, this Court clearly held that “two layers are not the same as one.” *Id.* at 501. While the Court suggested at the time that ALJs were excluded from its reasoning, cases decided since clearly demonstrate a shift in understanding: that ALJs—when possessing the type of extensive powers that the CFPB’s ALJ

controls here—must also be more accountable to the President than what a multi-layer for-cause removal system permits. *See Lucia*, 138 S. Ct. at 2049; *Seila Law*, 140 S. Ct. at 1293-94. Taken together, these factors—the CFPB’s broad authority, its ALJ’s executive powers, and the multi-tiered nature of the removal protection at issue—demonstrate that the ALJ’s dual-layered for-cause removal protection “impede[s] the President’s ability to perform his constitutional duty” to faithfully execute the laws of the United States. *Seila Law*, 140 S. Ct. at 2235.

B. The fact that the CFPB Director maintains control over the ALJ’s decisions does not ameliorate the President’s or Director’s inability to remove the ALJ.

The CFPB Director’s ability to maintain some control, or even to completely *set aside*, the ALJ’s initial decisions is immaterial to the Court’s constitutional analysis. In *Free Enterprise Fund*, this Court maintained that “Broad power over Board functions is *not* equivalent to the power to remove Board members.” *Free Enter. Fund*, 561 U.S. at 504. The Court specifically rejected the argument that the SEC’s “general oversight and enforcement authority over the Board” provides a sufficient substitute for the President’s removal power within a dual-layer for-cause removal protection structure that would protect the President’s ability to take care that the laws be faithfully executed. *Id.* at 504-05. The Majority’s decision directly contravenes this precedent.

The Twelfth Circuit found that dual-layer for-cause removal protections do not violate the President’s removal power because the Director “maintain[s] significant control over decisions that come out of the administrative adjudication process,” and, though she cannot remove the ALJ, the Director can “modify or set aside any findings or conclusions that the ALJ may make.” *Sutherland Bank*, 505 F.4th at 19. The Majority explicitly *rejected* Respondent’s request that the court interpret the MSPB’s removal power to allow broader removal discretion over ALJs that “fail[] to perform adequately or to follow agency policies, procedures, or instructions.” *Id.* at

18-19 (quoting Memorandum from the Solicitor General, U.S. Dep’t of Just., to Agency Gen. Counsels, Guidance on Administrative Law Judges After *Lucia v. SEC* (S. Ct.) (July 2018)).

The Director’s control over ALJs in these scenarios is irrelevant. This Court’s precedent is clear: the President, or agency Director who is removable at will by the President, must maintain “the power to remove [inferior officers],” not simply control their actions. *Free Enter Fund*, 561 U.S. at 504–05. In all other cases where a single Director could control the inferior officer, the Director could *remove*, not just control, the inferior officer for cause and the President could remove the Director *at-will*. *United States v. Perkins*, 116 U.S. 483, 485 (1886); *Morrison*, 487 U.S. at 664; *Seila Law*, 140 S. Ct. at 2199–2201. This case—where the MSPB can remove the ALJ only for cause, the President can remove the MSPB only for cause, and the Director retains *no* removal power over the ALJ—disrupts the balance of power inherently struck by the Constitution’s separation of powers. *See Sutherland Bank*, 505 F.4th at 37–38 (Bernhard, J., dissenting). The Majority essentially creates a malleable standard where courts may examine the discretion within for-cause removal protections that directors may have over their inferior officers. This Court need not tie itself into knots trying to decide *how much* director control other than removal power is sufficient over ALJs to survive constitutional muster because the Court has already developed a judicially manageable standard in *Free Enterprise Fund* governing dual-layer for-cause removal structures. Where the ALJ is subject to for-cause removal only to a supervising officer or body which itself is only subject to for-cause removal by the President, then that dual-layer for-cause removal structure “impede[s] the President’s ability to perform his constitutional duty” to ensure the laws are faithfully executed. *Seila Law*, 140 S. Ct. at 2199.

Conclusion

This Court should reverse the appellate court’s *en banc* ruling and find for Petitioner.

Applicant Details

First Name **Heather**
 Middle Initial **A**
 Last Name **Zelcs**
 Citizenship Status **U. S. Citizen**
 Email Address zelcsh@gmail.com

Address

Address Street 306 Cooper Street Apt. 401 City Camden State/Territory New Jersey Zip 08102 Country United States

Contact Phone Number **814-594-6845**

Applicant Education

BA/BS From **Gannon University**
 Date of BA/BS **November 2020**
 JD/LLB From **Rutgers University School of Law--Camden**
http://www.nalplawsonline.org/ndlsdir_search_results.asp?lscd=23101&yr=2011
 Date of JD/LLB **June 1, 2024**
 Class Rank **School does not rank**
 Law Review/Journal **Yes**
 Journal(s) **Rutgers Business Law Review**
 Moot Court Experience **No**

Bar Admission

Prior Judicial Experience

Judicial
Internships/ **Yes**
Externships
Post-graduate
Judicial Law **No**
Clerk

Specialized Work Experience

Recommenders

Davies, Megan
mjd@mjdavieslaw.com
Oberdiek, John
oberdiek@camden.rutgers.edu
Jenoff, Pam
pjenoff@camden.rutgers.edu

**This applicant has certified that all data entered in this profile and
any application documents are true and correct.**

HEATHER ZELCS

306 Cooper St. Apt. 401 Camden, NJ 08102 | (814) 594-6845 | zelcsh@gmail.com

June 18, 2023

Honorable Juan R. Sánchez, Chief Judge
U.S. District Court, Eastern District of Pennsylvania
14613 U.S. Courthouse
601 Market St.
Philadelphia, PA 19106
Courtroom 14-B

Dear Chief Judge Sánchez:

I am a rising third-year student at Rutgers Law School in Camden, New Jersey, and I am writing to express my interest in a judicial clerkship with your chambers for the 2024-2025 term. With my strong interest in legal writing and advocacy, I would be honored to serve as your law clerk.

My experience as a judicial intern for the Honorable Renée Marie Bumb, Chief United States District Judge for the District of New Jersey, inspired me to clerk and improved my legal research and writing skills. In addition to witnessing two trials, I researched legal issues for multiple opinions and provided written analysis promptly. Since then, I continued to enhance my research and writing skills in different ways. For example, as a legal writing fellow, I researched case law for a new brief problem issue, helped first-year law students learn to write briefs, and judged oral arguments. Also, writing a note for *Rutgers Business Law Review* on Article III standing in data breach class actions and the relevant circuit splits furthered my skills and overall intellectual curiosity.

Furthermore, I maintain a commitment to advocacy and inclusion. Being a member of the Rutgers national competition trial team, for example, I applied procedural and evidentiary rules as advocacy tools during mock trials and pre-trial conferences. Additionally, as the vice-president of OUTLaws, I hosted an expert panel discussing reproductive justice and an experienced attorney to inform students on what they need to know on estate planning for same-sex couples and families. Finally, I plan to gain more hands-on experience in these upcoming months as a Summer Associate at Cooper Levenson in Atlantic City.

I am confident that my skills, experience, and passion will make me a valuable clerk. I look forward to discussing the position further at your convenience. If interested, Chief Judge Bumb can be contact for a professional reference at (856) 757-5020. Thank you, in advance, for your consideration.

Respectfully,



Heather A. Zelcs

HEATHER ZELCS

306 Cooper St. Apt. 401 Camden, NJ 08102 | (814) 594-6845 | zelcsh@gmail.com

EDUCATION

Rutgers Law School, Camden, NJ

J.D. Candidate, June 2024

GPA: 3.581

Highlights: "A+" in Legal Analysis, Writing, and Research II

Honors: Merit Scholarship, Dean's List (top 25%) (Fall '21 and Spring '22)

Activities: Rutgers Business Law Review Senior Staff Editor (current), Legal Writing Fellow, OUTLaws Senior Advisor (current) and Vice-President, Competition Trial Team, Family Law Society Diversity & Inclusion Officer

Gannon University, Erie, PA

B.A. in Political Science and Legal Studies Certificate, *Summa Cum Laude*, November 2020

Academics: Minor in Criminal Justice

GPA: 3.99

Honors: Academic Award for Excellence in Political Science, Iowa Caucus Simulation Candidate Representative Winner, Celebrate Gannon Research Scholarship Presenter

Activities: Habitat for Humanity Campus Chapter Vice-President, Legal Studies Club, L.I.F.E. (Love is for Everyone) LGBTQ Club, Model United Nations, ASL Club

EXPERIENCE

Cooper Levenson, Attorneys at Law, Atlantic City, NJ

Summer Associate, June 5, 2023 – Current

Researching and writing legal memorandums on various areas of law including employment, family, business, and personal injury. Drafting contracts and helping attorneys prepare for litigation.

United States District Court, District of New Jersey, Camden, NJ

Judicial Intern, May 2022 – August 2022

Summer internship with the Honorable Renée Marie Bumb, Chief District Judge. Conducted legal research, wrote legal memorandums, assisted in drafting opinions, and attended various court proceedings.

Phillips Jewelers, Inc., St. Mary's, PA

Sales Associate, January 2021 – August 2021

Educated and assisted customers purchase fine jewelry. Input and organized inventory data. Created social media store advertisements and designed store window displays. Made minor jewelry repairs.

Law Offices of Arduini, Jewell & Karn, Erie, PA

Legal Assistant, April 2020 – September 2020

Drafted and prepared deeds, wills, estate settlement agreements, and other documents under the supervision of an attorney. Organized files, formatted spreadsheets, and provided secretarial assistance.

ADDITIONAL INFORMATION

Interests: Enjoy studying philosophy, cybersecurity, and Baltic politics.

Publications: Jeffrey Campolongo & Heather Zelcs, *Judge Hit with \$1.1 Million Verdict in Religious Discrimination Case Brought by Jewish Lawyer*, The Legal Intelligencer (March 23, 2023), available at <https://buff.ly/3JT8lTb>.

RECORD OF: HEATHER A ZELCS

STUDENT NUMBER: 211009938

RECORD DATE: 06/04/23 PAGE: 1

TITLE	SCH	DEPT	CRS	SUP	SEC	CRED	PR	GRADE
Fall 2021 RUTGERS LAW SCHOOL								
PROGRAM: LAW								
DEANS LIST								
CIVIL PROCEDURE	24	601	501	01		4.0		B+
CONTRACTS	24	601	511	01		4.0		B+
LAWR I	24	601	530	01		2.5		A-
TORTS	24	601	541	01		4.0		B+
TOTAL CREDITS ATTEMPTED:						14.5		
DEGREE CREDITS EARNED: 14.5 TERM AVG: 3.389 CUMULATIVE AVG: 3.389								

Spring 2022 RUTGERS LAW SCHOOL

PROGRAM: LAW
DEANS LIST

CONSTITUTIONAL LAW	24	601	506	02		4.0		A-
CRIMINAL LAW	24	601	516	01		4.0		B+
PROPERTY	24	601	536	02		4.0		B+
LAWR II	24	601	550	01		2.5		A+
TOTAL CREDITS ATTEMPTED:						14.5		
DEGREE CREDITS EARNED: 29.0 TERM AVG: 3.597 CUMULATIVE AVG: 3.493								

TITLE	SCH	DEPT	CRS	SUP	SEC	CRED	PR	GRADE
Fall 2022 RUTGERS LAW SCHOOL								
PROGRAM: LAW								
Degree Sought: JURIS DOCTOR								
BUSINESS LAW JOURNAL	23	600	741	01		0.5		PA
PROFESS RESPONSIB	24	601	582	01		2.0		A
PHIL FOUND OF LAW	24	601	648	01		3.0		B+
ANTITRUST LAW	24	601	662	01		3.0		B
EVIDENCE	24	601	691	02		4.0		A
INTRAMOCKTRIALTEAM	24	601	771	11		3.0		A
TOTAL CREDITS ATTEMPTED:						15.5		
DEGREE CREDITS EARNED: 44.5 TERM AVG: 3.666 CUMULATIVE AVG: 3.552								

Spring 2023 RUTGERS LAW SCHOOL

PROGRAM: LAW
Degree Sought: JURIS DOCTOR

BUSINESS LAW JOURNAL	23	600	741	01		0.5		PA
ALT DISPT E RESOLUTN	24	601	591	01		2.0		B+
EMPLOYMNT DISCRIM	24	601	605	01		3.0		A-
SECURED TRANSACTIONS	24	601	690	90		3.0		A
LAWR TEACHINGASSIST	24	601	751	01		1.5	P	PA
ADV TRIAL ADVOC COMP	24	601	764	11		3.0		A-
TOTAL CREDITS ATTEMPTED:						13.0		
DEGREE CREDITS EARNED: 57.5 TERM AVG: 3.698 CUMULATIVE AVG: 3.581								

** CONTINUED ON NEXT PAGE **

RECORD OF: HEATHER A ZELCS

STUDENT NUMBER: 211009938

RECORD DATE: 06/04/23 PAGE: 2

TITLE	SCH	DEPT	CRS	SUP	SEC	CRED	PR	GRADE
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Fall 2023 RUTGERS LAW SCHOOL

PROGRAM: LAW

Degree Sought: JURIS DOCTOR

ISLAMIC LAW	24	601	542	01	3.0
CMPLX CVL LITIGATN	24	601	584	20	3.0
NEW JERSEY PRACTICE	24	601	594	01	2.0
CRIM PRO-INVST PROCS	24	601	655	01	3.0
FEDERAL COURTS	24	601	692	01	3.0

TOTAL CREDITS ATTEMPTED: 14.0

DEGREE CREDITS EARNED: TERM AVG: CUMULATIVE AVG:

Last Term Information

LAST TERM CREDIT HOURS:	13.0
LAST TERM CREDITS IN GPA:	11.0
LAST TERM POINTS IN GPA:	40.7
LAST TERM CUMULATIVE CREDITS IN GPA:	55.0
LAST TERM CUMULATIVE POINTS IN GPA:	197.0

*** END OF TRANSCRIPT ***

Dear Judge,

I gladly write this letter to recommend Heather Zelcs for the position of law clerk. I write this letter both as Ms. Zelcs' professor, and as practicing member of the bar who appears regularly in multiple state and federal courts.

Ms. Zelcs was selected from a large pool of talented applicants to compete with Rutgers' National Trial Team, for which I am the head coach. Having had the opportunity to evaluate Ms. Zelcs over the course of two semesters, I am confident in recommending her for this role.

Ms. Zelcs' work ethic and attention to detail, necessary qualities in a clerk, surpass most law students and many practicing attorneys. My students work with intricate and lengthy fact patterns which require the application of complex law. The competition case files are newly designed and released each year, allowing only a short time for the team to prepare for a national competition. As a result, I often see students rushing through the case file - missing key facts, violating rules, or failing to properly apply the governing law. This was never a concern with Ms. Zelcs. Her work demonstrated that she carefully and efficiently reviewed, understood, and applied the voluminous information she was given. In fact, she recognized intricacies in the fact pattern which no other student had uncovered. I often found myself looking to her for confirmation when her fellow students asked for clarification on the fact pattern or competition rules.

Ms. Zelcs has an aptitude for analyzing and applying complex law. She is able to take difficult legal concepts and explain them in clear language. Ms. Zelcs had to deliver a number of opening statements and closing arguments during the course of our time together. From her first drafts, which I require all students submit in writing, her grasp of the law and its application to facts allowed to her stand out from her fellow students.

I know Ms. Zelcs will uphold the standards of our profession throughout her career. I look forward to seeing everything she will accomplish. I'm certain that her intelligence, integrity, and professionalism would make her a valuable law clerk to Your Honor.

Respectfully,

Megan J. Davies, Esq.

Admitted to Practice NJ, PA, DE

38 N. Haddon Ave.
Haddonfield, NJ 08033
(856) 671-1188
mjd@mjdavieslaw.com

Megan Davies - mjd@mjdavieslaw.com

June 19, 2023

The Honorable Juan Sanchez
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

Dear Judge Sanchez:

I am pleased to be able to recommend Heather Ann Zelcs for a clerkship in your chambers. I have had the good fortune of teaching Heather in two courses and serving as the faculty advisor on her excellent student Note, so I know Heather well. She is a terrific student, a strong writer, as well as a wonderful person. I'm entirely confident she'd be a real asset to you in your chambers.

I taught Heather as a 1L in Property. Over the course of the semester, which included bi-weekly multiple choice quizzes and a lengthy issue-spotter exam, she demonstrated a strong command of the infamously abstruse material. She was unfailingly well-prepared for Socratic-style questioning, and she was also among my most conscientious students, regularly attending my office hours. She did very well in the class, earning a B+.

I was therefore delighted when she enrolled in a challenging upper-level course I debuted last fall, Philosophical Foundations of the Law. The course ranges over every single 1L course and explores some of the philosophical issues underlying each body of law. The material is quite challenging. But Heather again did very well, earning another B+, and making perceptive and constructive contributions to class discussion. Between the two courses, what became evident to me is that Heather is exceptionally bright but also exceptionally reserved and humble. She is motivated by her own interest in learning, not in showing her classmates how smart she is or in getting a particular grade. And that is refreshing, especially for a law student.

For this reason, I was both happy and honored when she approached me about supervising her Note for the Rutgers Business Law Review. True to form, Heather set about writing a wide-ranging, outstanding article about data breach litigation. In working with her on that, I learned yet more about her. She is, first of all, an excellent writer. A quick glance reveals an A+ in Legal Analysis, Writing, and Research, and having read her work, I'm not surprised. She is also entirely dependable, open to critical feedback, and thoughtful, not to mention mature and personable. She would, I think, be a dream clerk.

In sum, I am delighted to be able to recommend Heather Zelcs. She would bring a great deal to your chambers. Should you have any questions about her and her candidacy, please do not hesitate to get in touch.

Sincerely,

John Oberdiek
Distinguished Professor of Law

John Oberdiek - oberdiek@camden.rutgers.edu

June 19, 2023

The Honorable Juan Sanchez
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

Dear Judge Sanchez:

It is my pleasure to recommend Heather Zelcs for a judicial clerkship. I have worked with Heather extensively throughout her first two years in law school and I have only the highest praise for her.

Heather was a student in my Legal Analysis, Writing and Research (LAWR) I and II classes during her first year of law school. She demonstrated excellent work ethic, initiative and interpersonal skills, managing the demands of the challenging LAWR course and her other first year course load, and consistently contributed thoughtful insights to the class. Additionally, she exhibited outstanding writing and analytical skills. Notably, these courses were taught as the students were coming back to in-person learning and the students had to contend with social distancing and masks. However, Heather managed the difficult format with ease and did an exceptional job. She received the highest grade in my LAWR II class.

Based on Heather's outstanding performance in my first year class, I selected her to be a Legal Writing Fellow for my LAWR class this past year. Heather has surpassed all of my expectations in her judgement, enthusiasm, work ethic and skill, and has proven to be one of the finest Legal Writing Fellows with whom I've had the pleasure to work in my fourteen years at Rutgers. She is truly stellar.

Heather is active in law school life and serves as an editor of the Business Law Review. She gained valuable experience last summer as a judicial intern with the federal district court.

I can say with confidence that Heather is an excellent clerkship candidate, and will be a great asset to your chambers.

Please do not hesitate to contact me at (856) 225-6318 if you have any questions. Thank you for your consideration.

Respectfully,

Pam Jenoff
Clinical Professor
Rutgers School of Law – Camden

Pam Jenoff - pjenoff@camden.rutgers.edu

HEATHER ZELCS

306 Cooper St. Apt. 401 Camden, NJ 08102 | (814) 594-6845 | zelcsh@gmail.com

WRITING SAMPLE

The following writing sample includes an excerpt of a memorandum I drafted during my judicial internship analyzing a motion to remand before Judge Bumb. Substantially, this memorandum reflects my own work. The law clerk did supervise. It is Judge Bumb's preference that none of the parties be identifiable from the face of this document. Thus, names and certain information have been redacted and changed (i.e., Plaintiff, Mr. Smith, Local Workers Union, and Johnson Contracting).

TO: Judge Renée Marie Bumb
FROM: Heather Zelcs
DATE: July 22, 2022
RE: Motion to Remand Memorandum

ISSUE

Whether removal of this case is warranted such that Section 301 of the Labor Management Relations Act of 1947 (“LMRA”) and Sections 502 and 514 of the Employee Retirement Income Act of 1974 (“ERISA”) preempt Plaintiffs’ state law claims.

BRIEF ANSWER

No. While procedurally proper, this Court does not have subject matter jurisdiction based on federal question jurisdiction as alleged. Therefore, remand is required.

BACKGROUND

A. State Court Complaint

On November 15, 2021, Plaintiffs (Plaintiff and Mr. Smith together) filed a five-count complaint against Defendants Local Workers Union and other named officials (collectively, “Union Defendants”) in a County’s Superior Court of New Jersey. [Docket No. 1-2 (hereafter, “Complaint”).] Plaintiffs assert the following causes of action in the Complaint: tortious interference with contractual relations (Count I by Plaintiff against all Defendants); tortious interference with prospective economic advantages (Count II by Plaintiff against all Defendants; Count III by Plaintiff against Union Defendants); defamation (Count IV by all Plaintiffs against Union Defendants); and trade libel (Count V by Plaintiff against Union Defendants). [*Id.*]

Plaintiff is a commercial and residential contractor. [*Id.* ¶ 1.] Mr. Smith is its Vice-President and a licensed contractor. [*Id.* ¶ 21.] Defendant Johnson Contracting directly competes with Plaintiffs’ business. [*Id.* ¶ 2.] In the Complaint, Plaintiffs allege that Union Defendants

repeatedly discouraged third parties from hiring or working with Plaintiffs. [*Id.* ¶¶ 19, 23–24, 42–44, 51–53, 61–68.] Plaintiffs allege that Union Defendants maliciously, and without privilege, campaigned against Plaintiffs with a defamatory and libelous misrepresentations and falsities, published to other contractors, Local members, prospective employers, and Plaintiffs’ employees, regarding their professional capabilities, and quality of their work. [*Id.* ¶¶ 19, 43, 61, 62.] Plaintiffs further claim that Union Defendants maligned Plaintiff as having failed to pay wage and benefit contributions to its employees with the purpose and object to tarnish Plaintiff’s reputation, to induce current and prospective workers to cease employment with it, and to inhibit the business’s ability to obtain and perform work. [*Id.* ¶ 63.]

Moreover, Plaintiffs claim that Union Defendants made derogatory and false statements to Mr. Smith’s prospective employer resulting in the withdrawal of an employment offer. [*Id.* ¶¶ 66–71.] Plaintiffs also allege that Union Defendants actively interfered with and manipulated the bidding procurement process to undermine Plaintiff’s bid and chances of being awarded certain contracts. [*Id.* ¶ 20.] Union Defendants allegedly disclosed Plaintiff’s bid on municipal projects to a direct competitor, Johnson Contracting, persuaded a general contractor to replace Plaintiff with Johnson Contracting, and berated and intimidated Plaintiff’s project manager into resigning from a project. [*Id.* ¶¶ 33–60.]

In sum, Plaintiffs’ claims stem from allegations that that Union Defendants disrupted their actual and prospective contractual relationships “in providing color to Johnson Contracting during the bidding procurement process, actively lobbying and presenting Johnson Contracting as a better and cheaper alternative to other contractors, berating Plaintiff’s project manager into withdrawing from the business’s project and contacting and making defamatory statements to Mr. Smith’s prospective employer.” [Docket No. 23-1 (hereafter, “Plaintiffs’ Brief”), at 15–16.]

B. Defendants' Removal to Federal Court

On December 21, 2021, Union Defendants filed a Notice of Removal pursuant to 28 U.S.C. § 1441, seeking to invoke the Court's federal question jurisdiction under 28 U.S.C. § 1331. [Docket No. 1.] On January 7, 2022, Union Defendants filed a letter requesting leave to file a motion to dismiss for lack of subject matter jurisdiction and for failure to state a claim. [Docket No. 4.] On January 21, 2022, counsel for Johnson Contracting entered an appearance and filed two written correspondences advising the Court that it joins in Union Defendants' request for leave to file a motion to dismiss [Docket No. 9] and that it consents to removal [Docket No. 10]. Also, on January 28, 2022, Johnson Contracting filed two more notices further advising the Court that Johnson Contracting consents to removal and that it "provided consent to co-defendant Local Workers Union prior to their application for removal being filed." [Docket Nos. 11, 12 (emphasis in original).]

On March 1, 2022, the Court held a premotion conference with the parties pursuant to its Individual Rules and Procedures. [Docket Nos. 20, 21.] Thereafter, on March 14, 2022, the Court granted leave for Plaintiffs to file the present motion. [Docket No. 23.] Then, on April 18, 2022, Union Defendants submitted a letter to the Court motioning for leave to file a sur-reply in support of opposition to Plaintiffs' motion to remand. [Docket No. 27-3.] Union Defendants assert that Plaintiffs' request to strike certain exhibits and materials in its reply warrants a sur-reply.¹ [See Docket No. 29.]

¹ As a threshold matter, the Court should deny Defendants' Motion for Leave to File Surreply. [Docket No. 27.] In the District of New Jersey, a surreply can be filed only with leave of the Court and at the Court's discretion. L. Civ. R. 7.1(d)(6). A surreply brief may be permitted by the Court to respond to new arguments raised in a reply brief. *See Smithkline Beecham PLC v. Teva Pharm. U.S., Inc.*, Civ. A. Nos. 04-0215, 55, 2007 WL 1827208, at *1 (D.N.J. June 22, 2007); *see also Raube v. X-L Specialized Trailers, Inc.*, Civ. No. 06-4628(NLH), 2008 WL 11384153, at *5 n. 6 (D.N.J. Apr. 10, 2008) (explaining that "[a]lthough it is within the Court's discretion to

C. Applicable Standard of Review

A claim arises under federal law where the “well-pleaded complaint establishes either that federal law creates the cause of action or that the plaintiff’s right to relief necessarily depends on resolution of a substantial question of federal law.” *Franchise Tax Bd. of Cal. v. Constr. Laborers Vacation Tr. for S. Cal.*, 463 U.S. 1, 27-28 (1983). A defendant may remove “any civil action brought in a State court of which the district courts of the United States have original jurisdiction.” 28 U.S.C. § 1441(a). Nevertheless, “[i]f at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded.” 28 U.S.C. § 1447(c).

Union Defendants assert federal question jurisdiction as the basis of removal. As the removing parties, Union Defendants bear the burden of demonstrating that the case is properly before the federal court. *See Frederico v. Home Depot*, 507 F.3d 188, 193 (3d Cir. 2007); *see also Abels v. State Farm Fire & Cas. Co.*, 770 F.2d 26, 29 (3d Cir. 1995). The presence or absence of federal-question jurisdiction is governed by the “well-pleaded complaint rule,” which provides that federal jurisdiction exists only when a federal question is presented on the face of the plaintiff’s properly pleaded complaint. *Caterpillar Inc. v. Williams*, 482 U.S. 386, 392 (1987). “Removal statutes are to be strictly construed, with all doubts to be resolved in favor of remand.” *Brown v. Jevic*, 575 F.3d 322, 326 (3d Cir. 2009) (citing *Batoff v. State Farm Ins. Co.*, 977 F.2d 848, 851 (3d Cir. 1992)). “It is well settled that district courts should remand close or doubtful cases for two reasons. First, remand will avoid the possibility of a later determination that the

disregard impermissibly filed sur-replies, we allow it in this instance because plaintiff is attempting to address arguments raised in defendant’s reply”) (internal citation omitted). The Court should deny the request because Defendants moved to file a sur-reply, not to respond to any new arguments raised in Plaintiffs’ reply brief, but rather, to attempt to recharacterize the applicable law at issue in the remand analysis.